TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 96.

CHARLES B. WILLIAMS AND JAMES D. ARNEST, PARTNERS AS WILLIAMS & ARNEST, PLAINTIFFS IN ERROR,

vs.

JASON N. BRUFFY, ADMINISTRATOR OF GEORGE BRUFFY, DECEASED.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED AUGUST 21, 1875.

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1 To the hon. judges of the Supreme Court of the United States:

The petition of Charles B. Williams and James D. Arnest, merchants and partners trading under the style of Williams and Arnest, citizens of the State of Pennsylvania, respectfully sheweth that they are ag'rieved by a final judgment of the supreme court of appeals of the State of Virginia, rendered on the 12th day of Sept., 1874, refusing an appeal to said court from a final judgment of the circuit court of Rockingham County, in said State of Virginia, rendered on the 18th day of April, 1871, in an action on the case then pending in said circuit court by the short ti'le of Williams and Arnest against George Bruffy's administrator. The original record of said cause, herewith filed, discloses that on the 29th of August, 1866, your petitioners, Williams and Arnest, instituted a suit in the said circuit court of Rockingham County, to wit, an action on the case to recover of the estate of the said George Bruffy, deceased, the sum of five hundred and seventy-eight dollars and fifty-seven cents, for goods, wares, and merchandise sold by your petitioners to George Bruffy, in his life-time, and due in the year 1861. There was no dispute as to the amount of the account; and although several pleas appear by said record to have been filed by the

2 defendant, yet the case was submit'ed to and decided by said circuit court of Rockingham upon the simple question alone of the discharge of said debt by virtue of the payment of the same by said Bruffy to John Kinney, a receiver of the Confederate States government, so called.

The two special pleas, to be found in said record, sitting up this defense, were demurred to by your petitioners, and the said circuit court of Rockingham, on consideration of said demurrer, and upon an agreed statement of facts by counsel, rendered a judgment for the defendant, J. N. Bruffy, administrator of the estate of George Bruffy. This agreed statement of facts commences on page 14 of said record.

The pleas filed by said defendant were the general pleas of non-assumpsit and plene administravit, and the two said special pleas of sequestration, upon none of which was issue joined except upon the plea of non assumpsit, and the facts agreed have no reference or applicability except to the said two special pleas of sequestration, or, in other words, confiscation, and said circuit court, upon said facts agreed, a jury being waived by consent of parties by their counsel, and upon said demurrer, rendered a final judgment for the defendant upon the idea and ground, obviously, that said debt having been paid to

3 the so-called confederate receiver, John Kinney, the plaintiffs were precluded from recovery.

From said judgment of the circuit court of Rockingham County an appeal was duly prayed for to the said supreme court of appeals of Virginia, to which court an appeal lay from said circuit court, said supreme court of Virginia being the highest judicial tribunal and court of last resort of that State; but said petition for an appeal was disallowed and rejected by said supreme court of appeals, in open court, at its session held on day of , in the year 1874, in the town of Staunton, as by a transcript of the record of said order of rejection herewith exhibited will fully appear. Said judgment of said supreme court of appeals being final so far as the action of the State courts of said State of Virginia is concerned, your petitioners have no remedy save by an appeal to this court, in pursuance of the provisions of law authorizing an appeal in such cases.

Your petitioners being citizens and inhabitants of the city of Philadelphia and State of Pennsylvania, and the defendant in the original

action being a citizen and an inhabitant of the State of Virginia, pray that such an appeal may be allowed to them, and assign the following errors in the judgment of the said supreme court of appeals affirming the judgment of said circuit court of Rockingham, as follows:

First. That the said judgment overruling said demurrers to said special pleas of sequestration was erroneous because it was in contravention of the Constitution of the United States, and of acts of Congress made from time to time in pursuance thereof.

Secondly. Because said judgment overruling said demurrer virtually decided that the so-called government of the Confederate States, while it existed, had a legal and constitutional right to confiscate the property of citizens of the United States within the limits of the territory over which the said so-called government exercised authority, upon the sole ground that said citizens of the United States were alien enemies to the people of said Confederate States, of which the said State of Virginia claimed to be one.

Third. That the said supreme court erred in this, that upon the facts agreed it should have rendered a judgment in favor of the plaintiffs, your petitioners, and not for the defendant, because said evidence showed that the defence set up by said defendant was based wholly upon his illegal and wrongful acts, done in violation of the rights of your petitioners guaranteed to them as citizens of the United States by the said Constitution of the United States and the acts of Congress lawfully made in pursuance thereof.

Fourth. That the said supreme court of appeals erred in this, that they overruled the demurrer to said pleas, although said pleas contained no allegation of any compulsory payment by George Bruffy to said receiver, and no evidence or allegation of the time at which such payment was made to said receiver.

Fifthly. That the effect of said decision of the supreme court of appeals of Virginia was to maintain that the act of the so-called congress of the Confederate States of America, commonly called the sequestration act, and passed on the 30th of August, 1861, and referred to and set out in said special pleas, was a valid, legal, and constitutional act, and that payments made under and by virtue of its pretended authority were valid and binding on the parties; whereas said law was in point of fact wholly invalid and illegal, because in contravention of the Constitution of the United States and the acts of Congress of the United States made in pursuance thereof, as has been expressly decided by the Supreme Court of the United States in the case of, among others, Texas vs. White, 7th Wallace, S. C. R'p'ts, page 700, and by the late Chief-Justice of the United States in the cases Keppell vs. Petersburg Railroad Co., 3rd American Law Review, page 389; Perdicaris vs. The Charleston Gas-Light Co., 10th Internal-Revenue Record, page 110.

For these reasons, your petitioners pray that a writ of error may be allowed to them from the said judgment of the supreme court of appeals of Vir'inia, and that said judgment may be reviewed and reversed, and that a citation in due form may issue, &c.

And your petitioners will ever pray, &c.

WILLIAMS & ARNEST,
By their Counsel.

OCT'R 1, 1874.

(Indorsed:) Williams & Arnest vs. Bruffy's adm'r. Petition for writ of error. Writ of error allowed Nov. 3, 1874. M. R. Waite, Chief Justice Sup. C't U. S.

7 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of appeals of the State of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles B. Williams & James D. Arnest, partners under the firm-name of Williams & Arnest, plaintiffs in error, and Jason N. Bruffy, adm'r of George Bruffy, deceased, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States,

8 and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Charles B. Williams & James D. Arnest, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-four.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

M. R. WAITE,
Chief-Justice Sup. Ct U. S.

9 The United States of America to Jason N. Bruffy, adm'r of George Bruffy, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein Charles B. Williams and James D. Arnest are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this seventh day of November, in the year of our Lord one thousand eight hundred and seventy-four.

(Signed) M. R. WAITE,
Chief-Justice Sup. C't U. S.

I acknowledge service of the within writ.
Given under my hand this 5th day Dec'r, 1874.

J. N. BRUFFEY,
Adm'r Est. Geo. Bruffey, dec'd.

10 Know all men by these presents, that we, Charles B. Williams and Frank S. Borden, both of the city of Philadelphia, in the State of Pennsylvania, are held and firmly bound to Jason N. Bruffy, administrator of the estate of George Bruffy, deceased, in the full and just sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said Jason N. Bruffy, administrator as aforesaid, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this seventeenth day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas, lately, at a supreme court of appeals of Virginia, in a suit depending in said court between the said Charles B. Williams and James D. Arnest, partners trading under the firm-name of Williams & Arnest, against the said Jason N. Bruffy, administrator as aforesaid, a decree was rendered against the said Williams & Arnest, and the said Williams & Arnest having obtained a writ of error and supersedeas, and filed a copy thereof in the clerk's office of the said court to reverse the
11 decree in the aforesaid suit, and a citation directed to the said defendant citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Williams & Arnest shall prosecute the said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES B. WILLIAMS. [SEAL.]
FRANK S. BORDEN. [SEAL.]

Sealed and delivered in presence of—
WILLIAM H. MILLER.
W. GRIER HIBLER.

Approved as bond for costs but not for supersedeas.

M. R. WAITE,
Chief-Justice Sup. C't U. S.

NOV. 30, 1874.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, W. Grier Hibler, a United States commissioner in and for said district and State, do hereby certify that Frank S. Borden, whose name is signed to the within bond as surety, this day appeared before me and made affirmation that he is worth the sum of two hundred and fifty dollars after the payment of his just debts and all those for which he may be and is bound for others and expects to have to pay.

FRANK S. BORDEN.

12 Given under my hand and official seal, at Philadelphia, this seventeenth day of November, A. D. 1874.

{W. GRIER HIBLER, U. S. COMMISSIONER, PHILADELPHIA.} W. GRIER HIBLER,
United States Commissioner for the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, W. Grier Hibler, a United States commissioner in and for said district and State, do hereby certify that Henry Borden this day appeared before me and made affirmation that he is personally acquainted with Frank S. Borden, whose name is affixed as surety to the within bond, and that he believes that the said Frank S. Borden, surety, is worth the sum of two hundred and fifty dollars after the payment of his just debts and those for which he may be bound and expects to have to pay.

HENRY BORDEN.

Given under my hand and official seal, at Philadelphia, this seventeenth day of November, A. D. 1874.

{W. GRIER HIBLER, U. S. COMMISSIONER, PHILADELPHIA.} W. GRIER HIBLER,
United States Commissioner for the Eastern District of Pennsylvania.

13 I, John Paris, clerk of the supreme court of appeals of Virginia, at Staunton, do hereby certify the foregoing to be a true copy of the appeal-bond in the case of Williams & Arnest against George Bruffy's administrator, filed in my office on the 7th day of December, 1874.

Given under my hand this 12th day of January, 1875.

JOHN PARIS, *C. C.*

14 VIRGINIA:

At a supreme court of appeals of Virginia, continued and held at the court-house of Augusta County, at Staunton, on the 12th day of September, in the year 1874.

Be it remembered that at this same term, to wit, on the 12th day of September, in the year 1874, came Charles B. Williams and James D. Arnest, merchants and partners under the style of Williams & Arnest, by John C. Woodson, esq'r, their counsel, and presented to the court their petition for a supersedeas to a judgment of the circuit court of Rockingham County, rendered on the 18th day of April, 1871, in a suit at law then therein depending, in which said petitioners were plaintiffs and Jason N. Bruffy, administrator of George Bruffy, dec'd, was defendant; which petition, with the transcript of the record accompanying the same and therein referred to, is in the words and figures following, to wit:

Petition.

To the hon. judges of the supreme court of appeals of Virginia:

The petition of Charles B. Williams and James D. Arnest, merchants and partners trading under the style of Williams & Arnest, respectfully represent:

15 That they are aggrieved by a final judgment of the circuit court of Rockingham County, rendered on the 18th of April, 1871, in an action on the case then pending in said circuit court, in the style of Williams & Arnest vs. Geo. Bruffey's adm'r.

The record of said case is rather imperfect and irregular, but, from an office copy thereof and the agreement of counsel herewith presented, marked "Agreement of counsel," it will appear that the case is as follows:

On the 29th of August, 1866, your petitioners, Williams & Arnest, instituted in the circuit court of Rockingham an action on the case to recover of the estate of George Bruffey, deceased, an account for goods, wares, and merchandise sold by petitioners to George Bruffey in his life-time, amounting to the sum of $578.57, due in 1861. There was no dispute as to the account, as it was fully proven; and, while several pleas appear to have been filed, yet the case was submitted and decided upon the simple question alone of the discharge of the debt by virtue of the payment of the same to John Kenney, receiver of the Confederate States government.

16 The two pleas in the record setting up this defence were demurred to, and the court overruled the demurrer, and upon the agreed statement of facts by counsel, the court gave a judgment for the defendant, J. N. Bruffey, adm'r of the estate of George Bruffey, dec'd. This statement of facts commences on page 14 of the record.

The pleas filed were the pleas of non-assumpsit, plene administravit, and two other special pleas of sequestration, upon none of which was issue joined except upon the plea of non-assumpsit, and the facts agreed have no reference or applicability to any plea except the two pleas of sequestration or confiscation, and the court, upon the facts agreed, found for the defendant, upon the idea that the debt having been paid to the confederate receiver, John Kenney, the plaintiffs were precluded from recovery.

The pleas of sequestration were not good, and the demurrer to them should have been sustained. The first of them was not good, because it does not allege that any legal proceedings had been instituted by the receiver of the Confederate States. The second is not good, because it does not aver anything like a compulsory payment to the receiver, and they are both defective upon the general rules applicable to pleading, and even if *of* the pleas are good, upon the statement of

17 facts, there should have been a judgment for plaintiffs.

There is no allegation of any compulsory payment by George Bruffey to the receiver, and no evidence of the time at which the payment was made to the receiver.

The judgment of the court upon these two pleas of confiscation is evidently based upon the idea that the government of the Confederate States of America was a *de facto* government and exercised belligerent rights. What are belligerent rights? In the Prize cases, 2nd Black, p. 652, the definition of belligerent rights is given as follows: "War is simply the exercise of force by bodies-politic against each other for the purpose of coercion; the means and modes of doing this are called belligerent powers. Legislation is not one of them, and a payment of a debt due to an alien voluntarily into the treasury of a revolting State is not a submission to force, and cannot exonerate the debtor from liability to his creditor; and while every individual engaged in the war is exempt any personal responsibility to the Government of the United States, it can hardly be supposed that, under the Constitution and laws of the United States, the validity of an act of the Confederate congress, in direct violation of these laws, and passed for the purpose of

18 confiscating the property of the citizens of the United States, can be sustained. Upon this subject, see the case of Texas vs. White, 7th Wallace, p. 732; 2nd West Va. Reports, p. 192-274, & 4th

West Va. Reports, p. 140; Brightly's Federal Digest, p. 849–850; 2nd Black, 635; Entes vs. Hunter, 30th Texas; 42nd Ala. Reports, 329–64; N. Carolina Reports, 132–522; 43d Ala. Reports, 340–420 & 434; 14th Howard, p. 38; 37th Georgia, 572; 1 Kent, 62; 1st Rob. Practice, 286–7; Shortridge vs. Mason, 3 Law Review, 119.

This payment by George Bruffey was not a compulsory payment, either under the seq'stration act of August, 1861, or the act of 1862. By the act of 1861, sec. 6, it was especially provided "that in the recovery of credits such delays should be allowed as may have been or may be prescribed in any State as to the collection of debts during the war." The Virginia stay law was in force during the whole war, and there was no necessity under either act for the payment of the principal of this debt during the war. No execution could issue, no force could be used, and we simply have the case of a payment of a debt where no execution could issue, and where the law under which the alleged payment is sought to be justified, as a matter of supreme force, did not
19 authorize or require the payment to be made. The court is familiar with the distinction in the law between the duty to turn over property or effects in the hands of a citizen of the Confederate States and the obligation to pay into the treasury of the Confederate States a debt due from a citizen to an alien, which distinction is adverted to in the opinion of the court of appeals in Newton vs. Bushong, recently decided in the court of appeals, and your petitioner is advised that under the law and evidence before the court judgment should have been rendered for the plaintiff.

Your petitioners assign for error in the proceedings of the circuit court—

1st. That the said circuit court erred in overruling the demurrer to the special pleas of sequestration.

2nd. The circuit court erred in rendering a judgment upon pleas in which no issue had been joined. (Tally vs. Arnold & Co., 4 Munford, 430; Green vs. Delany, 2 Munford, 518; 1st Rob. Practice, 220–1; Sydun vs. Burke & wife, 4 Rand, 161, and the cases cited in 1st Mathews' Digest, p. 285.)

3rd. The circuit court, upon the evidence, should have rendered a judgment in favor of the plaintiffs, the evidence being insufficient to justify a verdict for the defendant.

20 For the foregoing and other errors apparent on the face of the record, your petitioners pray a supersedeas to the judgment complained of.

WILLIAMS & ARNEST,
By Counsel.

I, John C. Woodson, an attorney practicing in the supreme court of appeals of Virginia, certify that, in my opinion, the judgment of the circuit court of Rockingham, complained of in the foregoing petition, should be reversed by the court of appeals.

March 28th, 1873.

JOHN C. WOODSON.

Transcript of record.

VIRGINIA:

At a circuit court held for the county of Rockingham, Tuesday, April 18th, 1871—present, the Hon. Robert H. Turner, judge of the 12th judicial circuit—sitting as a court of law.

Be it remembered that heretofore, to wit, that on the 29th day of

August, 1866, came Williams & Arnest, by their attorney, and sued out of the clerk's office of said court a summons against Jason N. Bruffy, adm'r of George Bruffy, deceased; which summons is in the words & figures following, to wit:

Commonwealth of Virginia to the sheriff of Rockingham County, greeting:

21 You are hereby ordered to summon Jason N. Bruffy, adm'r of George Bruffy, dec'd, to appear at the clerk's office of the circuit court of Rockingham County, at the court-house, on the first Monday in September next, being the rule-day for September, 1866, to answer Charles B. Williams and James D. Arnest, merchants and partners doing business under the firm-name of Williams & Arnest, of a plea of assumpsit. Damages, one thousand two hundred dollars.

And have then there this writ.

Witness Arthur S't C. Sprinkle, clerk of our said court, at the court-house, this 29th day of Aug., 1866, and in the 91st year of the Commonwealth.

A. S'T C. SPRINKLE.

[U. S. rev. stamp, 50c.]

Return.

AUGUST 31st, 1866.—Executed upon J. N. Bruffy, adm'r of George Bruffy, dec'd, by delivering him a copy of the within summons in person.

W'M H. RODEFFER,
Dep'ty for S. R. Alhbaugh, S. R. C.

And at another day, to wit, at rules held for the circuit court aforesaid, came the plaintiffs, by their attorney, and filed their declaration; which declaration is in the words & figures following, to wit:

ROCKINGHAM COUNTY:

In the circuit court of said county.

Charles B. Williams and James D. Arnest, merchants and
22 partners trading under the firm-name of Williams & Arnest, complain of Jason B. Bruffy, administrator of George Bruffy, dec'd, who has been duly summoned, &c., of a plea of trespass on the case upon promise. For that the said George Bruffy, in his life-time, to wit, on the 12th day of March, 1861, in the county aforesaid, was indebted to the said plaintiffs in the sum of $1,200.00 *dollars* for divers goods, wares, and merchandise by the said plaintiffs before that time bargained, sold, & delivered to the said George Bruffy, at his special instance & request; being so indebted, he, the said George Bruffy, afterwards, in consideration thereof, to wit, on the day & year aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money when he, the said George Bruffy, should be thereunto afterwards requested; and also in $1,200.00 *dollars* for the price & value of divers goods, wares, & merchandise then & there bargained & sold by the said plaintiffs to the said George Bruffy, in his life-time as aforesaid, and at his request; and also in $1,200.00 *dollars* for money then & there lent by the said plaintiffs to the said George Bruffy, in his life-time, as aforesaid, and at his request; and also in $1,200.00 *dollars* for money then & there paid by the said plaintiffs for the use of the said George

Bruffy, in his life-time, as aforesaid, at his request; and also in
23 $1,200.00 *dollars* for money proved to be due from the said George Bruffy, in his life-time, to the said plaintiffs, on an account then & there stated between them, and being so indebted, the said George Bruffy, in his life-time, afterwards, in consideration thereof, to wit, on the day & year last aforesaid, undertook & faithfully promised the said plaintiffs to pay them the said sum of money when he, the said George Bruffy, should be thereunto afterwards requested. Yet the said George Bruffy, in his life-time, and the said Jason N. Bruffy, administrator, as aforesaid, since his death, not regarding his several undertakings and promises as aforesaid, but contriving & subtly intending to deceive & defraud the said plaintiffs in this behalf, have not, nor hath either of them, as yet paid the several sums of money aforesaid, or either or any of them, or any part of them, although often requested so to do. But to pay the same, or any part thereof, to the said plaintiffs, the said George Bruffy, in his life-time, wholly refused, and the said Jason N. Bruffy, adm'r as aforesaid, hath ever since the said of the said George Bruffy hitherto wholly refused and still refuses so to do, to the damage of the said plaintiff $1,200.00 *dollars;* therefore they bring suit.

CHA'S E. HAAS,
Attorney for Pl'ffs.

24 1866, September. Common order.
October rule. Common order confirmed & writ of enquiry.

And at circuit court continued & held for said county, on the 21st October, 1866.

WILLIAMS & ARNEST, PL'FFS,
vs.
GEORGE BRUFFY'S ADM'R, DEF'T. } In assumpsit.

This day came the parties, by their attornies, and the defendant, by his attorney, pleaded non assumpsit, to which the pl'ffs, by their attorney, replied generally, and leave is reserved to the def't to file special pleas, and thereupon the judgment obtained in the office is set aside.

And at a court continued & held on Tuesday, October 26th, 1866.

ARNEST & WILLIAMS, PL'FFS,
vs.
GEORGE BRUFFY'S ADM'R, DEF'T. } In case.

This day came the parties, by their attornies, and on motion of the def't, and it appearing that the pl'ffs are no' inhabitants of this Commonwealth, it is ordered that unless security for costs be given by the pl'ffs within sixty days from this day, the said suit shall be dismissed.

1867, May & June. Continued.
25 1869. At a circuit court continued & held for the county of Rockingham, on Thursday, Nov'r 4th, 1869.

WILLIAMS & ARNEST, PL'FFS,
vs.
GEO. BRUFFY'S ADM'R, DEF'TS. } In assumpsit.

By consent of parties, this cause is submitted to the Hon. Tho's S. Hargest, judge of the 12th judicial circuit, to be decided by him (a jury

being waived) in vacation. The judgment of the court to be entered in the common law order-book, and to have the same effect as if entered in term.

And at circuit court continued & held for the county of Rockingham, on the 3rd June, 1870.

WILLIAMS & ARNEST, PL'FFS,
vs.
GEO. BRUFFY'S ADM'R, DEF'T. } In assumpsit.

By consent of the parties, by their attornies, and neither party requiring a jury, this cause is submitted to the judge of this court, to be decided in vacation, said judgment to be entered in the common law order-book of this court, and to have the same effect as if decided in term.

Depositions.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

26 I, Kinley S. Tener, a commissioner for the State of Virginia in the State of Pennsylvania, do certify that, on Saturday, the 11th day of September, 1869, at the counting-house of C. B. Williams & Co., No. 247 Market street, Philadelphia, between the hours of 8 o'clock a. m. and 9 o'clock a. m. of said day, Robert Brown, F. C. Williams, and John C. Berry, witnesses in behalf of Williams & Arnest, in a suit depinding in the circuit court of Rockingham County, in the State of Virginia, came before me.

And the said ROBERT BROWN, having been first duly sworn, deposeth and saith as follows:

Question by plaintiffs. State your name, age, occupation, residence, and acquaintance with the parties to this suit.

Answer. Robert Brown; thirty-four years of age; my occupation is a packer; I know the plaintiffs, having been in their employment as packer in the year 1861 and some years previously. Have some recollictions of George Bruffy buying goods from plaintiffs in the year 1861.

Question by plaintiffs. State what you know relative to any sale made by plaintiffs to George Bruffy in the year 1861.

Answer. On or about the 12th of March, 1861, I remember packing four (4) boxes of dry goods marked to George Bruffy and delivering them to the drayman for shipment. They were packed in good
27 order and boxed and securely strapped; but further deponent saith not.

ROBERT BROWN.

And the said F. C. WILLIAMS, having been first duly affirmed, deposeth and saith as follows, that is to say:

Question by plaintiffs. State your name, age, occupation, and residence; also your acquaintance with the parties to this suit.

Answer. F. C. Williams; twenty-nine years of age; am a merchant, and reside in this city. I know the plaintiffs and was a clerk in their employment in 1861. I remember George Bruffy in plaintiffs' store purchasing goods.

Question by plaintiffs. State your knowledge in regard to any sale of goods made by plaintiffs to defendant in the year 1861.

Answer. I know of a sale of goods made to George Bruffy on or about 12th of March of that year. This paper (hereto annexed, marked "Exhibit A") is a correct copy of the bill sold him; it is taken from plaintiffs' book of original entries. The entries were made in the book by myself on the day they bear date. The prices charged in this account were the fair market value of the goods at that time. They were packed and shipped in good order. The terms of sale were six months' credit.

28 Question by plaintiffs. What payments or offsets, if any, is defendant entitled to on said account, and what is the amount now due?

Answer. Nothing has been paid on the account and there are no offsets. The amount due plaintiffs is five hundred and seventy-eight $\frac{57}{100}$ dollars, with interest from September 12th, 1861. And further deponent saith not.

F. C. WILLIAMS.

And the said JOHN C. BERRY, having been first duly sworn, deposeth and saith as follows, that is to say:

Question by plaintiffs. State your name, age, occupation, and place of residence; also your acquaintance with the parties to this suit.

Answer. John C. Berry; forty-one years of age; I am a merchant, and reside in Philadelphia. I know the plaintiffs; was their book-keeper in 1861 and for some years previously. I know George Bruffy, and have seen him in plaintiffs' store buying goods.

Question by plaintiffs. Do you know of any sale of goods by plaintiffs to George Bruffy in 1861? If so, state your knowledge in the matter fully.

29 Answer. I do; it was a sale made March 12th, 1861. This account (Exhibit A) is a correct copy of the items and prices. The goods were packed and shipped in good order. Nothing has been paid on the account. The bill was purchased by Mr. Bruffy in person. And further deponent saith not.

JNO. C. BERRY.

Which examination being completed, I now send and certify the same unto the said circuit court of the county of Rockingham, in the State of Virginia. In testimony whereof I hereunto subscribe my name and affix my seal of office on the 11th day of September, 1869, at the place and between the hours specified.

[NOTARIAL SEAL.] KINLEY S. TENER.

Commissioner for Virginia in Philadelphia, Pa.

[U. S. revenue-stamp, 5 cts.]

Copy of account marked "Exhibit A" referred to in depositions.

(Folio 98.) All claims to be made within five days of purchase.

PHILADELPHIA, *March 12th*, 1861.

George Bruffy, Harrisonburg, Va., bought of Williams & Arnest, wholesale dealers in dry goods, No. 247 Market street. Terms, 6 mos.

30 Par funds. Bills not promptly paid, one per cent. a month to be added.

½ 1	1 p'r blankets, (to line)			90
1	1 Penn'a jeans	40^{3}	12^{2}	5 09
2	3 Colton's cass	114^{3}	16^{2}	18 93
3	3 " "	127^{2}	18	22 95
4	2 he'vy "	89	19	16 91
5	3 Dukeye plaids	184	10	18 40
6	2 Union "	114^{2}	11^{2}	13 17
7	2 " "	112^{2}	12	14 62
8	2 " "	113^{2}	12^{2}	14 22
9	2 fez prints	83^{2}	7	5 84
10	4 " "	168^{1}	7^{2}	12 62
11	2 " "	60	10	6 00
½	B. & coop'g			1 50
2	1 p'r blankets, (to line)	102	15^{2}	90
12	3 ¼ bl'd jeans	102	15^{2}	15 81
13	3 " " "	125^{1}	9^{2}	11 90
14	3 34 in. " "	129^{3}	8^{2}	11 02
15	1 ⅞ " "	118	8^{2}	4 14
16	1 moreen			4 50
17	1 diagonal tweed	23^{3}	47^{2}	11 28
18	1 ermine cloth	38	32^{2}	12 35
19	1 K'ty jeans	35	25	8 75
20	3 " "	113^{1}	12^{2}	14 16
21	1 ¼ Bly linen	27	25	6 75
31				
22	7 fez prints	270^{3}	8	21 66
23	2 fenn "	95^{2}	9^{2}	9 07
24	2 gup "	102^{2}	12^{2}	12 81
25	2 solid black	82^{2}	9^{2}	7 84
26	3 Brit. bl'ck & white	90^{2}	9^{2}	8 60
27	1 tweed	23^{3}	50	11 87
28	1 white flannel	25	38	9 50
29	1 scarlet "	26	29	7 54
30	1 " "	26^{3}	25	6 69
31	1 " "	24^{2}	21^{2}	5 26
32	2 fancy prints	79	8^{2}	6 72
	Am't over			360 27
	Am't up			360 27
33	5 fancy prints	188	9	15 92
½ 3	B. & coop'g			1 50
3	1 p'r blankets			90
34	3 Lenank ginghams	121^{3}	9^{2}	11 56
35	2 Mansh. "	85^{1}	9	7 67
36	2 " "	83	14	11 62
37	3 purple prints	124^{1}	9^{2}	11 80
38	2 plaid "	91	9	8 19
39	2 green "	80^{2}	9	7 27
30	1 Silesia	42^{2}	11^{2}	4 88
41	1 canvas	40	11^{2}	4 60
42	3 paper cambrics	118	7^{2}	8 85
43	3 col'd "	120^{3}	7	8 45
44	1 brown Holland	32	17	5 44
45	1 corset drill	47	8	3 76
46	1 Unne "	37^{1}	10	3 73
32				
47	1 f'cy cass	6	87^{2}	5 25
48	1 bl'ch'd jean	24	9	2 16
49	1 he'vy "	45	9	4 05
50	1 Himalaya	52^{1}	6^{3}	3 53
51	1 sup. bl'ch'd jean	45^{3}	9	4 12
52	3 brown drills	120	9	10 80

53	5 ¾ Osnaburgs	215²	12²	26 93
54	1 ¾ "	44¹	10²	4 65
	B. & coop'g			1 50
	1 wh't' flannel	26³	29	7 76
	1 " Marsailes	29	12²	3 63
	1 Log-cabin cass	47	18	8 46
	1 ¾ Osnaburg	43²	10²	4 57
	25 2½ bus. bags		29	7 25
	25 2 " "		25	6 25
	Coop'g			25
				578 57

Depositions.

Circuit court of Rockingham County, Virginia.

CHA'S B. WILLIAMS & JA'S D. ARNEST, TRADING as Williams & Arnest,
vs.
JASON N. BRUFFY, ADMINISTRATOR OF GEORGE Bruffy, deceased.

Depositions of witnesses taken before me, John F. Young, a notary
33 public of the State of Pennsylvania, residing in the city of Philadelphia, on behalf of plaintiffs, (according to notice, a copy of which is hereunto annexed, marked "A,") to be read in evidence on the trial of the above cause.

JOHN C. BERRY, a witness on behalf of plaintiff', residing in Philadelphia, State of Pennsylvania, being duly sworn according to law, deposes and says that he was the principal book-keeper of Williams & Arnest, plaintiffs in the above cause, and the annexed bill was bought and charged as described on or about the 12th day of March, 1861, and to this day remains unpaid. I know the goods were shipped from the store.

JOHN C. BERRY.

Sworn and subscribed before me this 3rd day of April, 1869.
JOHN F. YOUNG,
Notary Public.

FRANCIS C. WILLIAMS, a witness on behalf of plaintiffs, residing in the city of Philadelphia, Pennsylvania, being duly affirmed according to law, deposes and says that he was their assistant book-keeper, and that he made the charges of said account, and that it is correct and remains unpaid.

FRANCIS C. WILLIAMS.

Affirmed and subscribed before me this 3rd day of April, 1869.
JOHN F. YOUNG,
Notary Public.

34 ROBERT BROWN, a witness on behalf of plaintiffs, residing in the city of Philadelphia, State of Pennsylvania, being duly sworn according to law, deposes and says:

Question. Were you porter for Williams & Arnest at the time the goods were bought and shipped to Geo. Brufly?

Answer. Yes, sir. I packed the goods and shipped them on the 12th

March, 1861, 4 boxes in all, marked "Geo. Bruffy, Harrisonburg, V'a," according to my signature in the delivery-book of Williams & Arnest.

ROBERT BROWN.

Sworn and subscribed before me this 3rd day of April, 1869.

JOHN F. YOUNG,
Notary Public.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

On the 3rd day of April, A. D. 1869, before me, the subscriber, a notary public of Pennsylvania, personally appeared John C. Berry, Francis C. Williams, and Robert Brown and made the within deposition, signed and sealed the same, and desire it to be received as such according to law.

35 Witness my hand and notarial seal the day and year aforesaid.

JOHN F. YOUNG.

ARNEST, &C.,
vs.
JASON N. BRUFFY, ADM'R OF GEO. BRUFFY, dec'd.

The parties defendant and plaintiffs agree to the following statement of facts in connection with this cause, and dispose of the intervention of a jury, allowing the court to pass upon the points of law & facts involved therein:

1st. The plea of estoppel, in the following words and figures, to wit, is presented to the court, any technical objection to formation being waived and the court allowed to decide upon the question as a legal one presented in the plea upon demurrer.

The plea of non-assumpsit.

The plea of plene administravit.

Also one filed.

The following facts are then agreed between plaintiffs and defendant, and the court asked to pass upon the same, and the claim of plaintiffs to interest and a denial of the right to interest by the defendant from the 13th day of July, 1861, to April 2nd, 1865, on the principal debt claimed by the plaintiff, during which time the State of Virginia,

36 as one of the Confederate States of America, so called, was at war with the United States. The parties plaintiff were merchants of the city of Philadelphia, in the State of Pennsylvania, and George Bruffy, deceased, of whom Jason N. Bruffy is personal representative, was a citizen of Virginia. The debt claimed was made prior to , 1861, and the parties respectively plaintiffs and George Bruffy, deceased, in the order their names are written, resided during the war between the United States Government and the so-called Confederate States government, in the city of Philadelphia, in the State of Pennsylvania, a State of the United States, during the existence of hostilities between the United States Government and the States belonging or adhearing to the Confederate States government, so called, and in the State of Virginia which adhered to the Confederate States government in the war before mentioned. The latter, George Bruffy, died during the war, about the year of . During his life-time, under an act of the Confederate States government passed , the said George Bruffy paid to John Kenney, sequestrator of the Confederate States govern-

ment, and after a judgment of the district court of the Confederate States, the principal debt, with interest, claimed by the plaintiffs
37 on this suit. The said George Bruffy resided from the commencement of the war till his death in Rockingham County, Virginia, which was a part of Virginia attached to the Confederate States government, had representatives in the Confederate congress by election of the people, had members in the legislature of Virginia at Richmond, V'a, by election by the people, were assessed of taxes, and the same were each year collected of the people by the Confederate States government and the legislature at Richmond. During the war all commercial intercourse was prohibited between the Confederate States and the United States, of which first Virginia, including Rockingham County as a part of its current domain, was a part. Jason N. Bruffy, after death of his brother, administered on his estate, and was a resident of Rockingham, Virginia, from the date of letters of administration to this time.

Plea referred to above.

JASON N. BRUFFY, ADM'R, }
ads.
WILLIAMS & ARNEST. }

The defendant says that the said George Bruffy, deceased, in his lifetime did not undertake or promise, nor did the said defendant under-
38 take or promise in the manner and form as the said plaintiffs have above thereof complained against the defendant; and of this he puts himself upon the country. And for a further plea in this behalf, the defendant says that the plaintiffs ought not to have or maintain their aforesaid actions thereof against the said defendant, because he says that after the making of said promises and undertakings alleged by said plaintiffs, and previous to the institution of this suit, to wit, on the day of , 1861, and until the day of , 1865, the plaintiffs were citizens of the State of Pennsylvania, a State of the United States of America, whose government was at war during the period intervening these two last-mentioned dates of time with the government of the then styled Confederate States of America, which said Confederate States of America was a combination of a number of sovereign and independent States which had previous to the year 1861 been allied to the United States Government, among which was Virginia, which, having absolved herself from and dissolved all connection with the United States Government by a solemn ordinance of secession formerly made by a convention of delegates elected by the people, and subsequently ratified in legal manner by the people of the State, had united and confederated with other seceded States and established a common
39 government for certain purposes, and invested it with certain powers, defined in a written agreement known as the constitution of the Confederate States of America, and in persuance of such powers and purposes the government of the Confederate States of America exercised all the authority and privileges attaching to a sovereign and independent nation or government, levying taxes, conscripting armies, establishing courts, enacting laws, making treaties, &c., and the defendant says that in the exercise of the authority legitimately belonging to it, the government of the Confederate States of America enacted a law, approved Aug. 30th, 1861, sequestrating the property, all and every the tenements, lands, hereditaments, goods and chattels, rights and credits, within the Confederate States, and every right and interest held

therein, owned, possessed, or enjoyed by or for any alien enemy since the 21st day of May, 1861, excepting such debts due to an alien enemy as may have been paid into the treasury of any one of the Confederate States prior to the passage of the law, and making it the duty of every attorney, agent, former partner, trustee, or other person holding or controlling any such lands, tenements or hereditaments, goods or chattels, rights or credits, or any interest therein, of or for such alien
40 enemy, speedily to inform the receiver of the Confederate States of America, and to render an account thereof, and, so far as practicable, place the same in the hands of such receiver, whereupon such person was acquitted of all responsibility for property and effects so reported and turned over; and any person wilfully failing to give such information was made guilty of high misdemeanor. And the said defendant says that on the 1st day of January, 1862, whilst the said plaintiffs were citizens of Pennsylvania and the United States, and alien enemies of the Confederate States of America, and within the intendment of the law aforementioned, and whilst war was being waged between the Government of the United States and that of the Confederate States of America, and when the aforementioned law was in full force and applicable to any rights or credits, claims, goods, or chattels, or any interest therein, of the plaintiffs existing in the State of Virginia, the said George Bruffy, deceased, then a citizen of Virginia and the Confederate States, and as such subject to all the laws of the Confederate States of America, and having in the county of Rockingham, a portion of Virginia, the said full possession of and under complete control and jurisdiction of the Confederate States government, paid to one John Kenney, a receiver of the Confederate States of America
41 for the district of which Rockingham was one county, $578.57, with interest from Sept. 12th, 1861, to Dec'r 31, 1861, in full satisfaction of all and every claim existing against said George Bruffy in behalf of said plaintiffs, and of all promises and undertakings alleged by said plaintiffs, and as the full amount of all credits, property, or interest of the said plaintiffs under the control of said George Bruffy, deceased, by means of which payment the said defendant says he is fully acquitted and discharged from all promises or undertakings complained of by plaintiffs as alleged in declaration against him; and this he is ready to verify.

LIGGETT & YANCEY.

And for another and further plea in this behalf, the said defendant says, that the plaintiffs ought not to have or maintain their said claim against him, because he says that after the said alleged promises & undertakings were made, and before the institution of the suit, to wit, on day of , 1861, and until the day of , 1865, the said plaintiffs were citizens of the State of Pennsylvania, a part of the United States of America, and that the Government of the United States was at war with the government of the Confederate States of America,
42 which Confederate States was a combination of sovereign States formerly al'ied with the United States, but which had previous to such combination seceded from the United States Government and the United States and established a common government for certain purposes connected with the general welfare of each and all the Confederate States, and invested the goverment with certain rights and powers defined in a written document known as the constitution of the Confederate States of America. And the said government of the Confederate States of America, acting as the government of free, sovereign, and independ-

ent nation, and possessed of all the incidents attaching thereto, and in pursuance of powers vested in it, on the 30th of Aug., 1861, enacted a law sequestrating the credits, properties, rights, goods, and chattels of alien enemies, which, the properties, &c., were within the territory of the Confederate States of America, and under the control of citizens thereof, and provided for the appointment of a receiver clothed with the necessary power to sue for and collect the said credits, &c., of alien enemies in the name of the Confederate States; and George Bruffy, deceased, being a citizen of Virginia and Rockingham County, and being
43 indebted to said plaintiffs, who were alien enemies, John Kenney, a receiver of the Confederate States of America, filed a petition in the district court for western Virginia, in the Confederate States, in the year 1861, after Aug. 30th, 1861, and before Jan'y 1st, 1862, setting forth the facts of such indebtedness among other things, and a decree was entered in said court sequestrating said debt due plaintiffs, under which the said receiver, John Kenney, collected the amount thereof, $578.57, with interest from the 12th day of Sept., 1861, to Dec'r 31st, 1861, of said George Bruffy in his life-time, and executed a receipt accordingly, by means of which payment and collection the said defendant says he is fully acquitted of all claims which the said plaintiffs may have had against said George Bruffy, *or his* deceased, and is fully discharged of the promises and undertakings in the declaration mentioned. And this he is ready to verify.

LIGGETT & YANCEY.

And at a circuit court continued and held for the county of Rockingham Tuesday, April 18th, 1871.

WILLIAMS & ARNEST, PL'FFS,
vs.
GEO. BRUFFY'S ADM'R, DEF'T. } In assumpsit.

44 The demurrer of the pl'ffs to the defendant's plea in this cause is overruled, and, the cause being submitted to the court by consent, neither party requiring a jury, the court renders judgment for the defendant; whereupon it is considered by the court that the defendant, Jason N. Bruffy, adm'r of George Bruffy, dec'd, recover against pl'ffs, Charles B. Williams and James D. Arnest, merchants and partners doing business under the firm-name of Williams & Arnest, his costs by him about his defence in this behalf expended.

Copy—Teste:

L. W. GAMBILL, *Cl'k*.

There being some question as to what is a part of the record in the foregoing transcript, for the purposes of this cause, we agree that the whole of the foregoing transcript, including depositions, special pleas of sequestration, and statement of facts, was and is to be considered the record of said cause, and that the affidavit to the special pleas was dispensed with.

WOODSON & HAAS,
Att'ys for Williams & Arnest.
LIGGETT & YANCEY,
Att'ys for Bruffy's Adm'r.

45 And now at this day, to wit, the 12th day of September, in the year 1874, being the day and year first herein mentioned, the petition of Charles B. Williams and James D. Arnest, merchants

and partners trading under the style of Williams & Arnest, for a supersedeas to a judgment of the circuit court of Rockingham County, rendered on the 18th day of April, 1871, in a suit at law then therein depending, in which the petitioners were plaintiffs and Jason N. Bruffy, administrator of George Bruffy, dec'd, was defendant, having been maturely considered, and the transcript of the record of the said judgment seen and inspected, the court, being of the opinion that said judgment is plainly right, doth deny the said supersedeas.

STATE OF VIRGINIA:

Clerk's office supreme court of appeals, at Staunton.

I, John Paris, clerk of the supreme court of appeals of Virginia, at Staunton, in obedience to the mandate of a writ of error awarded by the honorable Morrison R. Waite, Chief-Justice of the United States, bearing date the 7th day of November, 1874, do hereby certify that
46 the foregoing manuscript, commencing on page 1 and ending on page 32, contains a true transcript of the record in the cause of Williams & Arnest against George Bruffy's administrator, as the same remains on file in the clerk's office of the said supreme court of appeals. And I do further certify that said supreme court of appeals is the highest court of law or equity in the State of Virginia in which a decision can be had.

In testimony whereof I have hereunto subscribed my name as clerk of the said supreme court of appeals of Virginia, at Staunton, (there being no official seal of said court,) this 12th day of January, 1875.

JOHN PARIS, *C. C.*

Fee for transcript, $10.44.

I herewith return the original writ of error awarded in this cause, the citation and acknowledgment of service thereon endorsed, and a copy of the appeal-bond on file in my office.

JOHN PARIS, *Clerk, &c.*

(Indorsement on cover:) No. 96. Charles B. Williams & James D. Arnest, partners as Williams & Arnest, plaintiffs in error, vs. Jason N. Bruffy, adm'r of George Bruffy, dec'd. Virginia sup. court of appeals. Filed 21st August, 1875.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 96.

CHARLES B. WILLIAMS ET AL., APPELLANTS,

vs.

JASON N. BRUFFY, ADM'R, APPELLEE.

BRIEF FOR PLAINTIFFS IN ERROR.

This is a writ of error to the Court of Appeals of the State of Virginia.

In the latter part of August, 1866, in the circuit court for the county of Rockingham, Virginia, the plaintiffs in error instituted an action of assumpsit against the defendant as administrator of the estate of George Bruffy, deceased. The declaration was for goods sold and delivered to the defendant's intestate, on the 12th day of March, 1861, and of the value of $1,200. The defendant pleaded *non assumpsit*, *plene administravit*, and also two special pleas. The special pleas set forth by way of defense, that the plaintiffs were and are citizens of of the State of Pennsylvania, one of the United States, whose Government was at war with the then styled Confederate States of America, the latter being a combination of a number of sovereign States, Virginia being among them, which States, previous to 1861, had been allied to the United States Government; that these States, having absolved themselves from all connection with the United States by a solemn ordinance of secession, had confederated together and established

a common government for certain purposes and with certain powers, in pursuance of which the government of the Confederate States exercised all the authority and all the privileges attaching to a sovereign and independent nation. In the exercise of the authority legitimately belonging to it the Confederate States enacted a law, approved August 30, 1861, sequestrating all the credits and other property within the Confederate States of, or belonging to, any alien enemy since May 21, 1861, and making it the duty of every person holding such credits and property, or any interest therein, to inform the receiver of the Confederate States, and render an account thereof, and place the same in the hands of the receiver, whereupon such persons should be acquitted of all responsibility for property and effects so turned over. Any person wilfully failing to give such information was declared to be guilty of a high misdemeanor.

That on the first day of January, 1862, while the war was raging, the said law being in full force, the defendant's intestate, who was then a citizen of Virginia and of the Confederate States, in the said county of Rockingham, paid to the receiver of the Confederate States the sum of $578.57, with interest thereon from September 12, 1861, to December 31, 1861, as the full amount of all credits, &c., of the plaintiffs under the control of the said George Bruffy, by means of which payment the defendant claimed to be fully acquitted and discharged of and from all the debts complained of in the declaration.

That the said Confederate receiver filed his petition in a district court of the Confederate States, setting forth the facts of the indebtedness, and a decree was thereon entered by said court sequestrating the debt of the plaintiffs, and that by virtue of the said decree the receiver collected the amount of the debt with interest, and the defendant's intestate made the payment as stated. (15 and 16.)

To the special pleas the plaintiffs demurred, (17,) and afterwards depositions were taken and filed, showing that the goods to the amount of $578.57 were sold and delivered by the

plaintiffs to the defendant's intestate, on the 12th day of September, 1861, (10.) A stipulation was made and filed supplementary to the facts set forth in the special pleas, and in explanation of them, (14;) and it was also agreed that a trial by jury should be waived, and that the case be submitted to the court for judgment, (10.) The case was accordingly submitted upon the pleadings, the depositions, and the statement of facts, all of which by agreement entered into the formation of the record, (17.)

There seems to have been no question made as to the sale and delivery of the goods as charged, and the fact that the plaintiffs have never been paid for them. The sole defense was made upon the confiscation proceedings and the payment made under them.

The court overruled the demurrer to the special pleas and rendered judgment for the defendant. From this judgment the plaintiffs appealed to the Court of Appeals of the State of Virginia; but the judgment was there affirmed, and the cause was brought here upon writ of error.

ASSIGNMENT OF ERROR.

The State Courts of Virginia erred in recognizing the condemnation, and other proceedings under the confiscation laws of the central insurrectionary government, as set forth in the special pleas and stipulation of counsel, and in executing and enforcing them by rendering judgment against the plaintiffs.

POINTS AND AUTHORITIES.

The sole question to be determined in this case is whether or not payment made to a receiver of the self-styled Confederate Government during the rebellion, by a resident of one of the insurrectionary States, of the amount of a debt due to a resident of one of the loyal States, in obedience to the sequestration laws of the Confederacy, and a decree of a court established by the authority of the Confederate Government, constitutes a defense to an action brought after the war, to recover said debt.

Is the record of the judgment of a hostile court established within the jurisdiction of the United States by the temporary power of the rebellious armies entitled to recognition as a valid judicial determination and to be received as such, in evidence, in any court of the United States? If this is not so, then does the fact that a payment was made to the Confederate treasury of the amount due from a resident of that district to a citizen of a loyal State by virtue of a judgment or decree of such a court constitute a defense? It is not intended to admit that any kind of coercion which could be exercised by the Confederate courts would justify any diversion of a credit due to an absent citizen, as was here attempted, nor that any debtor could, by a judgment of such court, be transformed into a bailee in relation to such debt, so that the doctrine of overpowering force could be applied to his case.

There is no allegation found in this record to the effect that this payment was made under duress or through coercion, unless such an allegation is to be inferred from the recitation in the first special plea of the penalty denounced by the Confederate confiscation act—that is, that "any person wilfully failing to give such information was made guilty of a high misdemeanor." But, it seems to me that the contrary inference ought to be drawn from the circumstance that there is no direct averment, in the record, of coercion or duress. The defense appears to have been based solely upon the strength and binding force of the sequestration proceedings and condemnation, and the payment made in obedience to them.

The States which attached their fortunes to the rebellion were, prior to 1861, voluntary members of the Federal Union, and subject to the authority and jurisdiction of the Constitution and Laws of the United States. The States which attempted to connect themselves with the insurrectionary government occupied a somewhat higher position than did the central organization. They were at the outset of the rebellion, and continued to be during its entire duration, "States" of the Federal Union; in their origin they were legitimate and peaceful, and this court has declared that the laws enacted by

such "States," necessary to preserve peace and good order among the citizens, which would be valid if emanating from a lawful government, will now, in general, be regarded as valid. (Texas *vs.* White, 7 Wall. 733.) But a different rule prevails in reference to the acts of the central power. Its acts were all in furtherance of the rebellion, or intended to defeat the just rights of citizens, and are therefore void; such acts passed by the unlawful State governments were also void. (Texas *vs.* White.) Every instant of the existence of the Confederate organization was a violation of the Constitution and Laws of the United States, and the fundamental constitution as well as every pretended statute law of the central power was in hostility to and violation of the "supreme law" of the land. The Constitution of the United States declares that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land." The State of Virginia was one of the original members of the Federal Union, and had been known to the judicial power in the United States only as such. The judicial power has no authority in regard to the political divisions and governments of the world; the courts are bound by the action of the political branches of the Government. "The courts have no policy, and can exercise no political powers." (Shortridge *vs.* Macon.) "No doctrine is better established than that it belongs exclusively to governments to recognize new States in the revolutions which may occur in the world; and until such recognition, either by our own government or the government to which the new state belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered." (Gelston *vs.* Hoyt, 3 Wheat., 324; Rose *vs.* Himely, 4 Cranch, 241.) The political branches of the Government have never, by any act, acknowledged the existence of any pretended government created or organized by the insurgents within the Federal jurisdiction, and have never yielded any of their authority over the territory of the States in rebellion. It should therefore seem to be plain that the courts of the coun-

try which have their existence within and by virtue of the Federal Union can recognize no government not previously recognized by the political departments; and the records of the proceedings of the pretended courts of such unrecognized governments should undoubtedly be excluded as evidence by our judicial tribunals. By the ordinary rules of evidence, well known to every student of the law, the defense relied upon in this case must be held to be unavailing, unless there is some better reason for sustaining it than that these sequestration proceedings are entitled to the respect due to the records of competent courts clothed with jurisdiction of the subject-matter before them. Nor can it be pretended that this payment, made in pursuance of an unlawful decree of an unlawful tribunal, can furnish a defense. It was an attempted invasion of the rights of private property; an effort of a hostile and rebellious organization to make the property of a loyal citizen subserve the interests of the rebellion, and to contribute to the destruction of the constitutional and rightful government. There was no coercion here, no imprisonment nor threat of imprisonment, and no "application of force." It will not be overlooked that the penalty of the pretended statute, as recited in the special plea, was denounced against those persons who should wilfully fail to give information touching the credits of alien enemies in their hands; no punishment was provided for those who should decline to pay it over to the Confederate receiver.

The decree being passed by an unlawful tribunal was void, and would furnish no protection from subsequent punishment to the person executing and enforcing it against the unwilling citizen. In the case of Mitchell *vs.* Harmony (13 How., 115,) this court, in speaking of an invasion of the rights of private property committed by an inferior military officer in obedience to the order of his commanding officer, says: "The order given was an order to do an illegal act; to commit a trespass upon the property of another, and can afford no justification to the person by whom it was executed."

The question presented by this record has been several times judicially determined in this country since the war. A case undistinguishable from the present one, except that a promissory note had been given for the debt, was before the Circuit Court of the United States for the fourth circuit, in June, 1867; in that case the plaintiffs were citizens of Pennsylvania; the defendant was a citizen of North Carolina; the note sued upon was made by the defendant and held by the plaintiffs; and the defendant in pursuance of proceedings instituted in the courts of the so-called Confederate States, paid the amount due upon the note to the receiver of the insurgent government. It was held that the plaintiffs were entitled to judgment for both principal and interest. (Shortridge *vs.* Macon, Chase's Decisions, 136.) The same question was before the same court in the case of Keppel *vs.* Petersburg R. R. Co.; (Ibid 167,) and in Perdicaris *vs.* Charleston Gas Light Co., (Ibid., 435.) The decision in each of these cases was in conformity with that in the case of Shortridge *vs.* Macon. (See also, Central R. R. and Banking Co. *vs.* Ward, 37 Geo., 515; The Sequestration Cases, 30 Texas, 688; Blossom *vs.* Van Amringe, 1 Phillips' Eq., N. C., 133; Barrell *vs.* Harvick, 42 Al., 60; Hedges *vs.* Price, 2 West Va., 192; Hawver *vs.* Seldenridge, 2 West Va., 274; Caperton *vs.* Martin, 4 West Va., 138.)

I have been unable to find any report of this case in the Virginia reports; I presume that tribunal was satisfied with its decision and reasons in the case of Newton *vs.* Bushong, (22 Grat., 628.) The case last mentioned is the only one I have been able to find reported, where proceedings under the sequestration acts in question were sustained as constituting a valid defense. The opinion in that case is very elaborate; it appears to be very earnest, and is ingenious, if not able. It seizes upon an apparent admission made by the late Chief Justice, in deciding the case of Keppel *vs.* Petersburg Railroad Company, that if the dividends in that case belonging to Mrs. Keppel "had been set apart to her especially, and the money thus set apart had been taken from the officers of the

company without consent on their part, by the application of force, either actual or menaced, under circumstances amounting to duress, the loss must have been borne by her;" and says, in regard to the executor who was defendant in that case: "Had he refused to pay over the money every one familiar with the history of that period and the temper of the public mind knows well that the whole power of the courts and the law would have been exerted against him to enforce obedience. What was he to do under such circumstances? How far was he to go in his resistance to the law? Was he to submit to a fine and imprisonment? Or, would the threat of an attachment for contempt have excused him in surrendering the fund? I think the executor was well justified in refusing to incur these hazards; he wisely declined a contest with a government which the whole naval and military power of the United States could not subdue in four years." The opinion concludes with the assertion that "the people of the Northern States," for redress for the losses they sustained by reason of such proceedings, must look "to the Government which claimed their allegiance, and which received their services. Considerations of national justice and equity, the laws and usages of nations, require that the people of the South shall not be placed in the position of insurers of funds in their hands lost by the accidents of war." It may be remarked that the plaintiffs in this case are now looking for redress "to the government which claimed their allegiance, and which received their services." They are invoking the judicial power of the United States to interpose and administer the "supreme law" of the land.

The predominating idea of the opinion above mentioned is an erroneous one—that is to say, that the rebellion was not a wrong, and that the sequestration acts of the hostile Congress had the force of "law;" that the "whole power of the *courts* and the *law*" would have been exerted against the contumacious debtor, and that any resistance offered by him would have been a "resistance to the *law*." These notions are utterly antagonistic to the principle that

the Federal Union is indissoluble, (Texas *vs.* White,) and that the Constitution and the laws made in pursuance thereof constitute the supreme law of the land. If a band of free-booters or highwaymen (I hope I may make the illustration without offending the sensibilities of anybody) should become sufficiently numerous and formidable to seize and retain possession of a State or Territory in defiance of the power of the rightful government, and should, in furtherance of their hostile purposes, organize a congress and courts, could the persons engaged in such an unlawful combination be protected from punishment in the courts of the rightful government, by enactments or judgments emanating from such creations? Surely not; and in a judicial view of the two cases, no difference can be seen. "When rebellion attains the proportions and assumes the character of civil war" it is not "purged of its treasonable character," nor is it to be punished only "by the defeat of its armies, the disappointments of its hopes, and the calamities incident to unsuccessful war." (Chief Justice Chase in Shortridge *vs.* Macon.)

The defendant in the case of Newton *vs.* Bushong, had he refused to pay, would not have been engaged in "resistance to the *law*," as the opinion assumes; he would have been resisting an attempt, on the part of an unlawful combination of men, to violate the rights of private property. The position of the inhabitants of those States may have been unpleasant in some instances, but in this one it does not seem to have been so. Here was no protest, no indication that the payment was not entirely voluntary. But it is immaterial whether it was voluntary or involuntary. The law assigns all the inhabitants of that part of the country engaged in the rebellion, those beyond the "boundary marked by lines of bayonets," to the same category—that of public enemies. (Prize Cases, 2 Black.) And this is the true answer to all that is advanced by the Court of Appeals of Virginia in its defense of the inhabitants of the States engaged in rebellion. The innocent must be classed with the guilty. "Those who engage in rebellion must consider the consequences. If they

succeed, rebellion becomes revolution, and the new government will justify its founders. If they fail, all the acts hostile to the rightful government are violations of law, and originate no rights which can be recognized by the courts of the nation whose authority and existence have been alike assailed." (Shortridge *vs.* Macon.)

The misfortunes of the inhabitants of the States in rebellion are to be attributed to themselves; if any of them were not personally guilty of the offense of rebellion, which produced these misfortunes, the communities in which they lived were guilty, and according to the law they must all stand or fall together; there can be no judicial discriminations. If the intestate who (as we must infer) so willingly paid the money of one of his innocent creditors into the coffers of the rebellion had resisted then, his personal representation would have been spared the difficult task of resisting now. No court existing under the constitution and laws of this country could, after the cessation of hostilities, lawfully refuse to punish persons who had then persecuted the intestate to recover this debt due to the plaintiffs. (See the "Belligerent-rights" Cases, 4 W. Va. R. 138.) The defendant's intestate was guilty of the vice of engaging in the rebellion, but avoided and postponed the punishment by paying into the Confederate treasury, without a murmur, the money of another who had trusted him, and thus left it for those who should come after him to answer for his fault.

The plaintiffs are entitled to judgment for the amount of their account together with interest. "Interest is the lawful fruit of principal." (Shortridge *vs.* Macon.)

The judgment of the Court of Appeals of Virginia ought to be reversed with directions to enter a judgment in favor of the plaintiffs for the amount of the debt, principal and interest.

ENOCH TOTTEN,
Counsel for Appellants.

92 H 8129

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHARLES B. WILLIAMS ET AL.,
Plaintiffs in Error,
vs.
JASON N. BRUFFEY, Administrator,
Defendant in Error.
No. 96.

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

This supplementary brief is presented in support of the appellate jurisdiction of the court in this case.

This cause was decided in the court below, wholly upon the questions raised by the demurrer to the special pleas of the defendant. The agreed statement of the facts (14) and special pleas admit the validity of the debt, as claimed, unless the defense presented by such special pleas and the facts agreed upon shall be adjudged to be valid.

The cause was, by consent, submitted to the court on the "points of law and facts" involved in the special pleas and the facts agreed upon in connection therewith, to be determined by the court as a "legal question" presented on demurrer; all technical objections as to form being waived. (14.)

The judgment of the court was rendered upon the determination of that question. The judgment, so far as it is material for the consideration of this case, is in these words, to wit: "The demurrer of the plaintiffs to the defendant's plea in this cause is overruled, and, the cause being submitted to the court by consent (neither party re-

quiring a jury), the court renders judgment for the defendant."

The action was in *assumpsit*, and was instituted August 29, 1866, in the circuit court of Rockingham county, Va., to recover for goods, wares and merchandise of the value of $1200, sold and delivered to Geo. Bruffey, deceased, on the 12th day of March, 1861.

The facts presented to the court by the special pleas and the agreed statement of facts, and relied upon to defeat the plaintiffs' rights, are substantially as follows, to wit: That the plaintiffs were citizens of Pennsylvania and of the United States (16), and resided during the late war in the city of Philadelphia, in the State of Pennsylvania, and the debt claimed was made prior to 1861; and the defendant's intestate was a citizen of Virginia and resided from the commencement of the war until his death, which occurred during the war, in the county of Rockingham, in the State of Virginia.

That the State of Pennsylvania was a State of the United States of America, whose Government was at war, during the period from the 13th day of July, 1861, to the 2d day of April, 1865, with the government of the then styled Confederate States of America, which said Confederate States of America was a combination of a number of sovereign and independent States which had, previous to the year 1861, been allied to the United States Government, among which was Virginia, which, having absolved herself from, and dissolved all connection with, the United States Government by a solemn ordinance of secession, formally made by a convention of delegates elected by the people, and subsequently ratified in legal manner by the people of the State, had united and confederated with other seceded States, and established a common government for certain purposes, and invested it with certain powers, defined in a written agreement known as the constitution of the Confederate States of America;

and in pursuance of such powers and purposes the government of the Confederate States of America exercised all the authority and privileges attaching to a sovereign and independent nation or government—levying taxes, conscripting armies, establishing courts, enacting laws, making treaties, &c.; and that in the exercise of the authority legitimately belonging to it, the government of the Confederate States of America enacted a law, approved August 30, 1861, sequestrating the property, rights and credits of all descriptions within the Confederate States, "held therein, owned, possessed or enjoyed by or for any alien enemy," after the 21st day of May, 1861; and making it the duty of any agent, attorney, trustee, or any other person holding or controlling such property, rights or credits "of or for such alien enemy," to inform the receiver of the Confederate States of America, and render an account thereof, and, so far as practicable, to place the same in the hands of such receiver; whereupon such person should be acquitted of all responsibility for property and effects so turned over. Any person wilfully failing to give such information was made guilty of a "high misdemeanor." That on the first day of January, 1862, the plaintiffs and George Bruffey, residing as aforesaid, and the war being waged between the United States and Confederate States, and the said law being in full force, and the deceased (George Bruffey) being subject to all the laws of the Confederate States, paid to John Kenney, a receiver of the Confederate States, the sum of $578.57, with interest from September 12, 1861, to December 31, 1861, in full satisfaction of the claim existing against George Bruffey, and in favor of the plaintiffs. That this payment was made in obedience to a decree of the district court of the Confederate States for Western Virginia, in the Confederate States, in which court John Kenney, the said receiver, filed his petition, setting forth the facts of the indebtedness of

George Bruffey, deceased, to the plaintiffs; and that by virtue of the authority of that decree the receiver collected the sum of money before stated from Bruffey during his lifetime, and executed a receipt accordingly; and that during the war all commercial intercourse was prohibited between the Confederate States (of which Virginia was a part) and the United States.

The judgment of the circuit court of Rockingham county, Virginia, was rendered on the 18th day of April, 1871. Afterwards, the plaintiffs presented their petition to the Court of Appeals of the State of Virginia, praying a supersedeas to the judgment of the circuit court. (5). This petition substantially sets forth the proceedings in the lower court, and points out the grounds of judgment and the errors committed by that court. In this petition for a "supersedeas" it is stated, among other things, that the judgment of the inferior court was "based upon the idea that the government of the Confederate States of America was a *de facto* government, and exercised belligerent rights;" and it was thereby submitted to that court that "it can hardly be supposed that under the Constitution and laws of the United States, the validity of an act of the Confederate Congress, in direct violation of these laws, and passed for the purpose of confiscating the property of the citizens of the United States, can be sustained."

The Court of Appeals, on the 12th day of September, 1874, denied the prayer of the petitioners, and affirmed the judgment of the inferior tribunal. The judgment of the Court of Appeals recites that the petition of Charles B. Williams and James D. Arnest "having been maturely considered, and the transcript of the record of said judgment seen and inspected, the court, being of the opinion that said judgment is plainly right, doth deny the said supersedeas." (17.)

In November, 1874, a petition for a writ of error was

presented by the plaintiffs to this court. This petition also substantially sets forth the proceedings in the State courts, and points out the errors of law committed, and prays for a writ of error to bring up the record, and that the judgment against them may be reviewed and reversed. This writ of error was allowed by the chief justice on the 3d day of November, 1874.

ARGUMENT AND AUTHORITIES.

The statute authorizing this court to issue a writ of error and review judgments of State courts in cases of this character is in the following words:

"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity:

Or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity:

Or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or exercised under, the United States, and the decision is against the title, right, privilege, or immunity, specially set up or claimed by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed, or affirmed, in the Supreme Court upon a writ of error." (Revised Stat., § 709.)

It has been repeatedly held by this court that it is sufficient to enable it to review the decision of the highest court of a State, if any of the conditions of the Statute appear, "either by express averment or by necessary intendment

in the pleadings," or that "the question was necessarily involved in the decision, and that the State court could not have given the judgment or decree which they passed without deciding it." (Crowell *vs.* Randall, 10 Peters, 368; Armstrong *vs.* The Treasurer, &c., 16 Peters 281.)

In the case of the Bridge Proprietors *vs.* Hoboken Co. (1 Wall., 116,) the court uses this language: "It is objected however, by the defendants, that the pleadings do not in words say that the statute is void because it conflicts with the Constitution of the United States, and do not point out the special clause of the Constitution supposed to render the act invalid.

"It would be a new rule of pleading, and one altogether superfluous, to require a party to set out specially the provision of the Constitution of the United States, on which he relies for action of the court for the protection of his rights. If the courts of this country, and especially this court, can be supposed to take judicial notice of anything without pleading it specially, it is the Constitution of the United States. And if the plaintiff and defendant in their pleadings, make a case which necessarily comes within some of the provisions of that instrument, this court surely can recognize the fact without requiring the pleader to say in words: 'this paragraph of the Constitution is the one involved in this case.'"

In the case of Furman *vs.* Nichol (8 Wall., 56,) the court says: "It is urged that the particular provision of the Constitution, which the plaintiffs in error say has been violated in its application to their case, should be contained in the pleadings, but this is in no case necessary. If the record shows, either by express averment, or by clear and necessary intendment, that the constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach, without applying it to the case in hand, then the jurisdiction of this court attaches."

It is impossible to avoid the conclusion in this case that the question of the rights, privileges and immunities of these citizens of Pennsylvania, and of the United States, who were the plaintiffs in the State court, were specially claimed and drawn into question, and that the decision of the court of the State was against such immunities, rights and privileges.

There was absolutely no other question in the case upon which the judgment could have proceeded. The fact of the sale and delivery of the goods, the price and the nonpayment thereof, was not in dispute. Indeed, if these questions of fact had been open, the court on the desposition, could not have decided against the plaintiffs on any one of them, without deciding erroneously. This court has said that if the record does not show that the State court in fact decided the case upon a question of local law, this court will not infer that it was decided on such a point, if such decision would be erroneous." (Neilson *vs.* Logow, 12 How., 98.)

There are two cases decided by this court very similar to the one under discussion. (Willson *vs.* Blackbird Creek, Marsh Co., 2 Peters, 245; and Smith *vs.* Maryland, 2 Cranch, 286.) In the first of these a declaration in trespass was filed to recover damages for running a vessel over and breaking down a dam, constructed across a navigable creek; the dam had been constructed under the authority of an act of the legislature of the State of Delaware. The pleas averred that the vessel was regularly licensed under the United States statutes, for the coasting trade, and that the stream was navigable and a public way for the benefit of the citizens of the United States.

To the pleas a demurrer was interposed, and the decision of the State court was in favor of the plaintiff. Although it did not appear in terms in the record that the defendant below claimed that the act of the legislature of the State which authorized the erection of the dam across

the creek, was repugnant to the Constitution of the United States, yet this court decided in favor of the jurisdiction. In the opinion of the court delivered by the Chief Justice, this language is used: "But we think it impossible to doubt that the constitutionality of the act was the question, and the only question, which could have been discussed in the State court. That question must have been discussed and decided."

In the case of Smith *vs.* Maryland, (6 Cranch, 286,) it was contended that this court had no appellate jurisdiction because the case turned exclusively upon the confiscation laws of the State; and that no question relative to the construction of the treaty of peace did or could arise. But upon the facts stated on the record, the only title asserted by the original plaintiffs was founded on the confiscation acts of the State, and the only title asserted by the original defendants was for a British alien protected by the treaty of peace. If that title was so protected, then the plaintiffs were not entitled to the relief sought by the bill; if otherwise then the plaintiffs were entitled to the decree. The State court decided that they were so entitled and hence necessarily decided against the treaty as a protection.

The present case is a stronger one than either of the cases just cited. In addition to the plain intendment of the pleading and proceedings, we have the further unmistakable statement in the petition for a supersedeas addressed to the Court of Appeals of Virginia, that "it can hardly be supposed that under the Constitution and laws of the United States, the validity of an act of the Confederate congress, in direct violation of these laws, and passed for the purpose of confiscating the property of the citizens of the United States can be sustained." In support of this proposition, the petitioners cited a long list of authorities for the consideration of the State court.

The judgment in this case was a "final" judgment and it is one rendered by the "highest" court in Virginia; the

judgment of the inferior court was a final judgment against the plaintiffs there, and it was affirmed by the court of appeals of Virginia, "by their refusal to entertain an appeal." (Richmond R. R. Co. *vs.* Louisa R. R. Co., 13 How., 80.)

Argument is hardly necessary to show the illegality of the assumptions of the defense relied upon, including the sequestration act. If it should be asked which particular provisions of the Constitution are violated, it might be truthfully answered that the entire instrument is assailed. The special plea to which the demurrer was interposed expressly avers: that a number of sovereign States seceded and established a common government, denominated the "Confederate States of America;" that this common government levied taxes, conscript armies, established courts, enacted laws and made treaties. It is also averred that this common government was the result of a combination of a number of sovereign States, amongst which was Virginia, and the agreed statement of facts in the case states that during the time mentioned the State of Virginia "as one of the Confederate States of America so called, was at war with the United States." Every one of these acts was a violation of a vital part of the Constitution of the United States.

The Constitution provides that no State "shall enter into any treaty of alliance or confederation," and that no State, without the consent of Congress, shall "keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded." That instrument also declares that the legislative powers granted "shall be vested in a Congress of the United States," and that the Congress shall have the power "to constitute tribunals inferior to the Supreme Court" and "to declare war" and "to raise and support armies"; that "the judicial power of the United States shall be vested in one superior

court and such inferior courts as Congress may from time to time ordain and establish." It also provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." It seems very plain that in creating the pretense for this defense the people, as well as the State, of Virginia violated most of the cardinal provisions of the Constitution. It is also understood that in the case of Predicaris *vs.* Charleston Gas-Light Co., decided a few days ago, the absolute nullity of the Confederate confiscation laws was declared by this court.

First. In the decision in this cause there was drawn in question the validity of a statute of, or an authority exercised under, the State of Virginia, on the ground that it was repugnant to the Constitution of the United States, and the decision was in favor of such validity.

This proposition may be supported by a reasonably liberal construction of the law. In the first place, was the validity of a statute of a State drawn in question? It is true that this confiscation statute emanated from a "combination" of States, of which Virginia was one, and that it cannot be considered a "State" statute under a strict construction; but the law giving jurisdiction to this court is one for the benefit and good of the whole people and should be liberally construed. There is no doubt that if the State of Virginia had not violated the Constitution by entering into an unlawful "agreement or compact" and by confederating with several other States, the plaintiffs would not have been injured. Their creditor would not have been within the Confederacy. The efficacy of the objectionable law so far as it operated upon the rights and privileges of the plaintiffs, was imparted to it by the action of Virginia through these unlawful acts and combinations with other States. Suppose that two States should make an agreement, compact or confederation, and ordain a statute; would they be thus permitted to avoid the juris-

diction and controlling power of the federal judiciary? Does the greater not include the less?

In the next place, if this case does not fall within the letter or spirit of the law so far as it relates to a "statute of a State," may we not say, with reason, that the defense rested, at least in a great degree, upon "an authority exercised under a State."

The confiscation proceedings relied upon were had by virtue of a decree of "the district court of the Confederate States" (15), or, to use the language of the second special plea (17), a decree of "the district court for Western Virginia, in the Confederate States." The organic authority of this court was probably derived from the central power, composed of Virginia and other States, but the principle and life sustaining authority was that of the State of Virginia. The inducement to all the circumstances contributing to this defense proceeded primarily from the authority of this one State. It is alleged in the first special plea that Virginia had "dissolved all connection with the United States Government by a solemn ordinance of secession, formally made by a convention of delegates elected by the people, and subsequently ratified in a legal manner by the people of the State," and that the State "had united and confederated with other seceded States and established a common government." If we eliminate the authority of Virginia from the defense, nothing will be left; the whole fabric must fall. In the absence of the authority of this State no hostile court could have existed; no confiscation law could have been enforced, and the creditors of the plaintiffs would have remained in loyal territory.

Second. The plaintiffs in this cause specially claimed a title, right, privilege and immunity under the Constitution of the United States, and the decision of the Court of Appeals of Virginia, was against the title, right, privilege and immunity so specially claimed.

This second proposition is less difficult. The plaintiff relied upon his rights under the provisions of the Constitution which declare:

(1). That "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and—

(2). Upon that portion of the Fourteenth Amendment to the Constitution which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

As citizens of Pennsylvania, one of the United States, (16,) the plaintiffs under these declarations of the Constitution had a right to pass through or reside in Virginia; to take, hold, and dispose of property within her borders; to institute and maintain actions of any kind in her courts, and to have the same rules of law applied in the determination of such suits as would be applied in suits between the citizens of that State. (Corfield *vs.* Coryell, 4 Wash., 380; Ward *vs.* Maryland, 12 Wall., 430.) They were entitled to every privilege or immunity allowed to the most favored class of citizens of Virginia. (Tenn. *vs.* Ambrose, 1 Meigs, 331; Paul *vs.* Virginia, 8 Wall., 180; Slaughter House Cases, 16 Wall., 75.) The courts of Virginia could not and would not have enforced such a defence against one of its own citizens in a suit by another of its citizens. The terms of this confiscation law as set out in the pleadings and proceedings in this case relate exclusively "to alien enemies;" or, in other words, to citizens of the United States. This language undoubtedly was designed to include "enemies" residing within the loyal States. Domestic enemies, or enemies residing within the lines of the Confederacy, were doubtless dealt with in a different

and more efficacious manner. There is no allegation in the case to the effect that the plaintiffs were actually engaged in waging war upon Virginia or her citizens. The averment is that Pennsylvania was included in the United States, and that Virginia was a part of the Confederate States, and that the United States was engaged in carrying on war with the Confederate States, and thus the plaintiffs were constructively held to be "alien enemies." This Confederate statute sought to discriminate against the plaintiffs and to condemn their goods, not so much because they were "enemies" as because they were "enemies" residing in the United States. This statute attempts to prescribe one rule for citizens of the United States not citizens of Virginia, whilst a different and discriminating rule was laid down for the benefit of another class of citizens, and the State of Virginia through her Court of Appeals has undertaken to enforce the law in violation of the Constitution.

It may be denied in argument that the plaintiffs were protected by the Fourteenth Amendment to the Constitution because the suit was instituted before that amendment had been ratified. The summons was sued out in the local court on the 29th day of August, 1866, (7,) and the Fourteenth Amendment was finally ratified on the 28th July, 1868. (15 Stat., 710.) It was approved by Congress June 16, 1866. That amendment declares that "no State shall make or *enforce* any law which shall abridge the privileges or immunities of citizens of the United States." The contract between the parties was concluded March 21, 1861. These plaintiffs were citizens of the United States, and the State of Virginia through one of its co-ordinate departments "enforced" a law which did or attempted to abridge the privileges and immunities of the plaintiffs. So far as this jurisdictional question is concerned, or so far as it is material for this court to now

consider, the enforcement of the obnoxious pretended statute took place on the 12th day of September, 1874. At that date the courts of all the States were prohibited from *enforcing* any law of this discriminating character. It is immaterial how the authorities of the State undertake to enforce the prohibited law; if they do it by the exertion of the military branch of the State power, or by the executive or judicial, it is equally obnoxious to the spirit and letter of the Amendment. This court has declared in the case of Predicaris *vs.* Charleston Gas Light Co. that the confiscation laws of the Confederate government were void. It follows that no right, title or interest of the plaintiffs was divested by the unlawful decree of the unlawful Confederate court, or by the proceedings under it, or by the payment made September 12, 1861, in obedience to its mandate; those proceedings were absolutely null and void. It must be therefore true that the only enforcement of the law was made by the courts of the State of Virginia. At the time of this enforcement the Constitutional provision was operative and prohibited such enforcement. The Constitutional amendment, from the date of its ratification, operated upon the Court of Appeals of Virginia, and therefore rendered its judgment void. (See Rex *vs.* Justices of London, 3 Burr, 1456; Norris *vs.* Crocker, 13 How., 429; Ins. Co. *vs.* Ritchie, 5 Wall., 541; Gale *vs.* Wells, 7 How. N. Y. Pr.; Hollinsworth *vs.* Virginia, 3 Dall., 378; Butler *vs.* Palmer, 1 Hill, 324.)

On the subject of the operation of the Fourteenth Amendment see United States *vs.* Cruikshank, 2 Otto, 542; Minor *vs.* Happersett, 21 Wall., 162; Slaughter-House Cases, 16 Wall., 74; Bartemeyer *vs.* Iowa, 18 Wall., 129.)

It seems plain from these considerations that the plaintiffs in this cause, in the Court of Appeals of Virginia, asserted their Constitutional right to all the privileges

and immunities of the citizens of Virginia, and of the United States, and that the decision of that tribunal denied to them those privileges and immunities.

ENOCH TOTTEN,
Counsel for Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1877.

CHARLES B. WILLIAMS *et. al.*, APPELLANTS,

vs.

JASON N. BRUFFY, ADMINISTRATOR, APPELLEE.

BRIEF FOR DEFENDANT IN ERROR.

HENRY WISE GARNETT,
For Appellee.

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There is no question raised by the record that can give this Court jurisdiction.

The jurisdiction of this Court to review the judgments of State courts is a limited one, and is defined by the twenty-fifth section of the Judiciary Act, (1789,) as amended by the second section of the act of February 14th, 1867, which is contained in the 709th section of the Revised Statutes of the United States.

The practice, which has obtained under the 25th section of the act of 1789, is entirely different from that under the 22d section of the same act; for while, under the latter, the writ issued at the direction of the party seeking, under the 25th section it was not considered a matter of right, but must only issue on the allowance of some one of certain judges designated in the act.

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In Buell *vs.* Van Ness, 8 Wheat., 312, this Court ~~says~~ decided: "By the 22d section, all cases are revisable if the amount exceeds a certain sum; by the 25th section, only special

causes are revisable;" but, in these, no reference is had to the value involved in the controversy.

These statutes have been so often construed by this Court, that there is now no portion left uncertain.

Not only must there have been a question decided within the appellate jurisdiction of this Court, but it must appear from the record that such a question has been decided, and that the State court could not have given the judgment or decree without deciding that question.

Armstrong *et al. vs.* Treasurer, 16 Pet., 281.
Philips' Practice of the Supreme Court, 2d edition, folios 119 and 120, and cases there cited.

It is true, that in the petition the appellants claim the judgment was in contravention to the Constitution of the United States, and the acts of Congress made from time to time in pursuance thereof; but such an allegation is not sufficient, the record must show under which clause of the Constitution the appellant claims.

Maxwell *vs.* Newbold *et al.*, 18 How., 511.
Lawler *vs.* Walker *et al.*, 14 How., 149.
Philips' Practice, 2d edition, pp. 121 and 122, and cases there cited.

The record shows no question of the validity of a treaty or statute of the United States. Nor is there any question of the validity of a statute of, or an authority exercised under, any State; on the contrary, the learned counsel for the appellants has claimed, in his printed brief, and has been at some trouble to prove, that the acts of the appellee's intestate were not done under a statute of any State whatever, but under a statute of an intangible thing of air, which, in reality, never existed, and is known as "The Confederate States of America, so-called," which was an entirely different

thing from the State of Virginia, to which he kindly conceeds a political existence.

I would here call the attention of the Court to the rule laid down by this Court in Bethel *vs.* Demaret, 10 Wall., 537, as regards decisions made by State courts not being within the description of cases where is drawn in question the validity of a statute of, or an authority exercised under, any State; also, Philips' Pr., 2d Ed., p. 133.

Nor is there any decision shown by the record against any title, right, privilege or immunity, claimed under the Constitution or any treaty, statute of, or commission held or authority exercised under, the United States.

The only claim under the Constitution, which could possibly have been made by the appellants, was that his contract with the intestate could not be set aside by the action of the Confederate States. But, with such a claim, this Court can have no jurisdiction, as it is not within the acts defining the jurisdiction of this Court on writs of error from State courts.

And, even if the decision of the State court in this case did impair the validity of a contract under the decision of this Court, in Knox *vs.* Exchange Bank, 12 Wall., 379, there is no authority here to review the decision:

"There is no authority to review the judgments of the State courts because they refuse to give effect to valid contracts, or because in their effect they impair the obligations of contracts. If the rule were otherwise, every case could be reviewed where the party setting up the contract alleged that the Court had taken a different view of its obligation to that which he held. To confer the jurisdiction, it must be the constitution or statute of the State which impairs the obligation of the contract."

Philips' Pr., 2d Ed., p. 133.

The recent decision of this Court, in the case of New York Life Insurance Co. *vs.* Hendren, 2d Otto, 286:

"This Court has no jurisdiction to re-examine the judgment of a State court in a case where the pleadings and the instructions asked for and refused present questions as to the effect, under the general public law, of a sectional civil war upon the contract which was the subject of the suit, and when it was not contended that that law, as applicable to the case, had been modified or suspended by the Constitution, laws, treaties, or Executive Proclamations of the United States"—

Is conclusive on the case at bar, which should be dismissed for want of jurisdiction.

In arguing this cause upon its merits, I shall adopt and rely largely upon the argument presented by the learned, clear and exhaustive brief for the counsel for the defendant, in the case of Keppel's Administrators *vs.* Petersburg R. R. Co., Chase's decisions, page 175 *et seq.*

My first proposition is, that the government of the Confederate States was a government *de facto* in the highest sense in which that term can be used, exercising every power of government.

In speaking of the Confederate Government in Mauran *vs.* Insurance Company, 6 Wall., 1, Mr. Justice Nelson says:

"Still it cannot be denied, but that by the use of these unlawful and unconstitutional means a government *in fact* was erected greater in territory than many of the old governments of Europe, complete in the organization of all its parts, containing within its limits more than eleven millions of people, and of sufficient resources in men and money to carry on a civil war of unexampled dimensions, and during all which time the exercise of many belligerent rights were either conceded to it, or were acquiesced in by the supreme governmenr, such as the treatment of captives both on land and sea as prisoners of war, the exchange of prisoners; their vessels captured, recognized as prizes of war and dealt with accordingly; their property seized on land referred to the judicial tribunal for adjudication; their ports blockaded, and the blockade maintained by a suitable force, and duly notified to neutral powers—the same as in open and public war."

As I am only contending for a *de facto* government, it is not necessary for me to argue whether it was a lawful and therefore *de jure* government.

In the prize cases, 2 Black, 695, this court was unanimously of the opinion that an act of Congress approved July 13, 1861, "recognized a state of civil war between the Government and the Confederate States and made territorial," and the justices differed only on the point as to whether the war could be considered territorial, and the persons residing south of the "boundary marked by lines of bayonets," could be regarded as public enemies before that date.

As the facts upon which the defence in this case are based occurred, as shown by the record between the 30th day of August, 1861, and the 1st day of January, 1862, the defendant was a public enemy, a citizen of a *de facto* government engaged in war with that of his creditor.

This court has on this principle repeatedly held captures of the property of citizens within the Confederate lines, but not in sympathy with the Confederacy, valid, especially in the case of Mrs. Alexander's Cotton, 2 Wallace, 404.

In the case of Thorington *vs.* Smith, 8 Wall., 1, the late Chief Justice expresses the opinion that the Confederate Government may be classed among the governments of which those established at Castine and Tampico are examples.

In United States *vs.* Rice, 4 Wheat., 246, this Court decided that by the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty.

It is true that the late Chief Justice in the case of Keppell's Administrators *vs.* Petersburg R. R., says that in the highest degree the confederacy was not a *de facto* government, for the reasons that "it never held the National Capital. It never asserted any authority to represent the nation."

In commenting upon this, Judge Mondure, of the Court of Appeals of Virginia, in Walker vs. Christian, 21 Gratt., 991, says;

"The test here suggested may be a correct one, when applied to a people having but one central consolidated government, in such states or communities, as a general thing, the object of the revolutionary government is to overthrow and expel the existing government, to occupy the capital and give laws to the nation. So long as the organization falls short of this result, it may be a question whether it possesses the attributes of a *de facto* government in the highest degree. However this may be, the test suggested cannot in justice be applied to the Confederate States. They did not attempt or desire to occupy the National Capital as their seat of government, nor to give laws to the people of the United States. The whole scope and object of the movement was a separation from the Northern States; the formation of an independent Confederation; the establishment of a new government over their own people, within their own territories, limits, and jurisdiction. How eminently successful this struggle was for four years at least, in the attainment of these objects, let the Supreme Court of the United States answer in the case of Mauran *vs.* Ins. Co., 6 Wall., 1."

Secondly. I maintain—

"As in civil war, all persons residing under the established jurisdiction and control of a *de facto* government are liable to be treated as enemies in law to the government *de jure;* so the same persons are entitled to perfect legal immunity for whatever they, during such war, in support of, or in obedience to, much more when it is done by *compulsion* of the *de facto* government over them, provided only the thing done be not contrary to the lawful usages of war."

I propose to rely chiefly upon the latter part of this proposition, that is, for immunity for acts done under compulsion, but I hold the whole of the proposition as true.

By the common law of England, the partisans and adherents of a *de facto* king could not be punished as traitors for

their support of him; this doctrine is re-asserted by 11 Hen. 7, c. 1, and it is submitted that every reason as given in 4 Blackstone's Comm., 77–78, exists in this country.

In the prize cases, 2 Black., page 673, Justice Grier, in delivering the opinion of the Court, says:

"Under the very peculiar constitution of this Government, although the citizens owe supreme allegiance to the Federal Government, they owe, also, a qualified allegiance to the State in which they are domiciled. Their persons and property are subject to its laws.

"Hence, in organizing this rebellion, they have acted as States claiming to be sovereign over all persons and property, within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. Several of these States have combined to form a new confederacy, claiming to be acknowledged by the world as a sovereign State. Their right to do so is now being decided by wager of battle."

As I do not propose to discuss the right of the States to form the confederacy spoken of by Justice Grier, it is sufficient that they actually did so combine to form such a confederacy, and that the persons and property of the citizens of the States so combining were subject to the laws of their respective States, it appears to follow as an unadvoidable consequence that the citizens of these States are entitled to immunity for obeying the laws of the Confederacy, for the case stands as follows:

A is a citizen of the State of Virginia, and his person and property is subject to its laws, but the State of Virginia, acting as a State, has combined with several other States to form a confederacy, which is *in fact* formed.

I leave out the question as to whether it was formed unlawfully, for if lawfully formed it was not only a confederacy IN FACT, but BY RIGHT.

The laws of this Confederacy are IN FACT binding on the States and the citizens thereof, and their persons and prop-

erty subject thereto, and under a law of this *de facto* Government property in the possession of A, and belonging to B, is taken by the *de facto* officer of the *de facto* government; can it be claimed that A is not entitled to immunity against B?

Again, in Thorington *vs.* Smith, (8 Wall., 7,) the late Chief Justice, in speaking of the Confederacy, says:

"Its power was recognized as supreme in nearly the whole of the territory to the States confederated in insurrection. It was the actual government of all the insurgent States except those portions of them protected from its control by the presence of the armed forces of the National Government."

From this it is plain that in the opinion of this Court the persons and property of the citizens of its territory were subject to the laws of this Confederacy.

In the same case, on page 9 *et seq.*, the Judge classes the Confederate Government with those of Castine (4 Wheaton, 253) and Tampico, (9 How., 614,) and in speaking of obedience to its authority, he says:

"But it made obedience to its authority in civil and local matters, not only a necessity, but a duty."

It is not necessary, however, to pursue this branch of the argument further, as the appellee in this case only claims immunity for acts done under the compulsion of the "supreme power," spoken of by the late Chief Justice in Thorington *vs.* Smith.

In commencing this branch of the argument I would call attention to an error into which the learned counsel for the appellant has fallen, on the fourth page of his brief, in which he states that no allegation is made that this payment was made under duress or coercion, except the statement in the first plea, on page 16 of the record, of the penalties in the sequestration act for failing to give information of the debt.

I find in the plea that not only was such information to be given, but an account was to be rendered, and the property as far as practical, placed in the hands of the receiver of the Confederate States, and the person failing in any of these particulars was guilty of a misdemeanor. I have not had the opportunity of consulting the statutes of the Confederate States, but in Newton, Ex'r, *vs.* Bushong, (22 Gratt., 631,) I find a full statement by the court of the substance of these acts, from which it appears that at the date at which this payment was made, the person holding the property sequestered was bound to deliver the same when required by the court, and that for failure to so deliver he could be proceeded against for contempt.

I have previously, in this argument, by quotations from the decisions of this Court shown that the Confederate Government was a *de facto* government, and that it was the supreme power in the territory over which it had control, with power to enforce obedience to its laws whether lawful or unlawful. If these facts be true, is it necessary to state any further coercion than is stated in the plea?

In the case of Newton, Ex'r, *vs.* Bushong, (22 Gratt., 633,) the court uses the following language upon this point:

"A Government of supreme authority denouncing the penalties of fine, imprisonment and forfeiture upon acts of disobedience to its proclaimed will, affords as strong an illustration of 'menaced force' as can well be imagined."

The appellee's intestate in this case was a public enemy of the appellant, his property liable to seizure by the United States, owing obedience as a duty to the Confederacy in local and civil matters—and in fact compelled to yield obebience to it in all matters; in the same category with the inhabitants of Castine and Tampico—is ordered by the "supreme power" of the territory within which he resides under the penalties of fine and imprisonment to pay over

certain moneys in his hands due from him to the appellant, must he resist, and if so, how far?

Quoting again from Newton, Ex'r, *vs.* Bushong:

"A citizen may be justified in resisting tyranny and oppression, but he is under no obligations nor can he be required to engage in a hopeless and dangerous contest with the government under which he lives, however illegal it may be, in defence of property confided to his care either as bailee, agent or executor."

It is unreasonable to lay down the rule that resistance must be made, unless this Court in deciding whether a proper resistance has been made, is capable in each case of deciding upon the physical and moral courage of each particular individual.

There is no evidence that the appellee's intestate gave his assent to, or participated in the act of confiscation; on the contrary it is to be inferred that he only made the report and payment because he was ordered by the proper authorities.

The counsel for the appellant cites the cases of Texas *vs.* White and Dewing *et al. vs.* Perdicaris *et al.*, but there is an important distinction between those cases and the one at bar; in those the parties purchased certain confiscated property by their own volition and taking the risks of the invalidity of the sale, the rule of *caveat emptor* applies; there was no compulsion brought to bear upon them; in this case there was the highest kind of menaced force compelling payment and no volition was allowed, the Government of the United States was unable to afford the appellee's intestate any protection, and it is submitted that it is unreasonable, illogical, and illegal to attempt to hold his estate responsible to the creditor in this case.

HENRY WISE GARNETT,
For Appellee.

IN SUPREME COURT OF THE UNITD STATES.

——:o:——

Charles B. Williams and James D. Arnest, parties as Williams & Arnest, Plaintiffs in error

vs.

Jason N. Bruffey Administrator of George Bruffey, dec'd.

In error to the Supreme Court of Appeals of the State of Virginia.

BRIEF OF COUNSEL FOR DEFENDANT.

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The discussion of this cause in the variety of questions involved in the *jus gentium* would allow a wide scope for argument. The voluntary law, the customary conventional, &c., descanted upon and sometimes differed upon by international law writers could readily be referred to here, but the immediate issue in this cause has undergone the criticism and conclusion of judicial decision and political sanction in every civilized State, and to this decision and sanction we shall in the main confine our thoughts.

During the late American civil war Williams and Arnest were creditors of George Bruffy. The former were residents of ~~Rocking-ham~~ Pennsylvania during that period, the latter of Virginia, Rockingham county. The debt was sequestated under the act of Confederate Congress, and judgment obtained in a Codfederate court, and paid to a Confederate receiver by George Bruffy in his lifetime. After the conclusion of the war the parties, Arnest and Williams, brought suit in the circuit court of Rockingham county, Virginia, against the administrator of George Bruffy, who was then dead, for the debt. The plea of non assumpsit—*plene administravit*—and special pleas involving the sequestation payment were filed, and the various questions submitted to the court for decision. The court decided adversely to Williams and Arnest who applied for a writ of error to the Supreme Court of Appeals of Virginia which was refused. Then the parties appeal to this court.

The case itself is more fully presented in the pleadings, and admitted facts all there stated. The application of the law to these facts, if it is a cognizable case in this court, is what we will here consider. There comes to us out of all the discussion and dissertation of the *jus gentium* a concurrent range of authority and sentiment tangent to this case, establishing,

1st. that a *de facto* government, enjoying belligerent rights, has control over the people within the territory it holds, and that the laws adopted by such government are binding on all persons residing within its control, in connection with all things situate there or owing to an alien enemy;

2d. That the test of such *de facto* government is the number of the population adhering to it, the armies it organizes in the field, the power it manifests in the way of energy, time and pluck in resistance to the enemy, the facts recognized or repudiated by the enemy, such as interchange of prisoners of war, pronouncement of blockades, &c;

To be as brief as possible, we refer to the conclusions of law as contained in Wheaton's International Treatise—23 p.—note 15—style recognition of belligerency;

3rd. That the Confederate government, as so denominated, did comprehend in its influence and authority all the facts constituting belligerency, and the *de facto* power entitling it to such rights as grow out of this condition of civil war. It is prepostrous almost to refer to that which the court must judicially take to notice, for from Manassas along the battle fields in every southern State, to the fierce struggles at Sharpsburg and on the heights of Gettysburg down to the surrender at Appomattox the gallant and efficient armies there engaged, and the dead soldiers that fill almost every cemetery of the country attest this, and the archives of this Federal government show the blockade declared of southern ports and the exchanges of prisoners which were agreed on. Every battle flag lost, and every battle flag won for the period of four years of fierce war that hangs in a State house or in the Capitol constitute one of the facts of evidence establishing the *de facto* power and belligerent rights of the Confederate government, and eulogiums which have been written and printed in commemorating the valor of the "grand army" would be fulsome nonsense and a lie as would the encomiums passed by the southern people on the armies of Lee and Johnston and Johnson and Jackson if this was not really *true*.

But high judicial authority, high judicial Federal authority, has passed on this. See the opinion of Chief Justice Chase in the case of Thornington vs Smith—8 Wallace. The learned Judge there asserted that obedience to the Confederate government in civil or local matters was not only a necessity but a law, and in the opinion delivered by him in Richmond in the case of Keppels, adm'r, vs. Petersburgh railroad he endorsed the power and legality of a Confederate law confiscating the goods of an alien enemy.

Judge Nelson—6 Wallace—in case of Mauran vs. Insurance Co., admitted that in proportion of men and resources the Confederate government carried on a civil war of unexampled dimensions, that belligerent rights all the time were conceded to them or recognized and acquiesced in by the Supreme Government, such as the treat—

ment of captives, naval and land, exchange of prisoners, captured vessels recognized as paized of war, siezed property refered to judicial tribunals for adjudication, ports blockaded and maintained by suitable force and the fact duly ratified to neutral powers.

This *de facto* power and exercise and recognition of belligerent rights being a verity, the only question left to consider is could this Confederate government, under the laws of nations confiscate or sequesta.e the debt due from a citizen of this Confederate government or resident within the limits of its eminent territorial domain, to a *Federal* citizen residing without its limits. We can find no diversity on this point among law writers. Whilst some indicate that if the debt has not been sequestrated and applied that the fact of war does not itself confiscate or sequestate, yet none deny, and, we believe, all affirm that, if the belligerent government asserts a law of confiscation or sequestation and a debt paid under its authority, that the alien creditor can never hold the debtor who has paid the debt to a second liability, but that the debt is extinguished just as if paid into the hand of the creditor.

See as to this the case of Ware vs. Hylton—3 Dall, 227. Vattel, 3 chap., 8 page, 138; chap. 9, sec. 161. See the case of Brown vs. U. S.—Cranch rep., 8, 126, 139. In this last case it was decided unequivically that the right exists to confiscate any property found in the country on the happening of war. There was on this judicial unanimity and Chancellor Kent says—1, 59—this is no longer a debatable question. See also Halleck—p. 365—and Woodsey—118—both asserting the same doctrine—all of which are referred to in Wheaton—305—in note. The opinion expressed in the case of Ware vs. Hylton is referred to by Judge Staples of the Supreme Court of Virginia—p 637—22 Gratt. Rep.—and citing from 2 Black U. S. R—shows that the doctrine was recognized and acted on by the U. S. authorities in seizing and confiscating the cotton of Mrs. Alexander, a widow lady residing in Arkansas, who was not even in sympathy with the rebellion, and that this court sustained the act. This opinion of Judge Staples, concurred in by all his appellate associates, his argument and authorities, attention is most respectfully invited to as concisely and clearly vindicating the power of the Confederate government to confiscate, and the *debtor*, who was made to pay under the act as released from any future liability for the same to any person. The case then decided is that of Newton's Executor vs. Bushong's Administrator, where this question was at issue and most patiently considered.

The Court will observe that so far as the right to confiscate and sequestrate is concerned, that this right does not depend upon the *government* being *de jure*, only that it must be *de facto*, and possessed of belligerent rights. The government is not the party, but the individual who lives within the country where the government executes the authority, and he is relieved because it was not possi-

ble for him legally to avoid the payment of the debt to a power which was as to him omniponent. He could not equitably be blamed for this, and whilst an alien enemy may have had no wrongful connection therewith, it has been deemed better for society that he should lose his credit, than that the debtor should be made twice to pay that which he once has paid according to the established rules of war and of nations. The government *de facto* may fail to be a government *de jure*, but the individual who holds the property of another may rightfully surrender it at the demands and coercion of that *government*.

The principle as to confiscatian and the results, apply equally to a debt sequestrated in the hands of the resident of a country controlled by a *de facto* government as to a debt sequestrated in the hands of a resident of a government *de jure*. We have not deemed it necessary to advert to the fact that George Bruffey was nowhere, nor were his heirs charged with being inimical to the United States, or being in sympathy with the "rebellion," the rule we are contending for being equally as applicable to a "Rebel debtor" as to a "loyal citizen."

It is not claimed, and if it was, it could not be established, that there was any treaty stipulation on the surrender of Lee and the Southern Armies, or the acceptance of amnesty and reunion by the seceded States, which surrendered the priviledges and rights resulting to a debtor from the enactment of this law by the Confederate Government, and this would be the only means under the comity of nations which could estop the *debtor* Bruffey from sustaining his plea, and being granted a full discharge against the alien creditors Arnest and Williams.

There is another question in this case which deserves consideration, and that is the question whether this court has jurisdiction of this case.

Was there any Federal question decided in the cause, or any question embraced in the 25th section of the Judiciary act which gives this court jurisdiction to review the decision of a State court? We think not.

There was not drawn in question the validity of any treaty or statute of the United, States or authority exercised under the United States.

There was not drawn in question the validity of any statute or authority exercised under any State. There was no title, right, privilege or immunity claimed under the Constitution of the United States or any treaty or statute or commission or authority exercised under the United States, involved in the cause, nor any decision against their validity, or against such title, right, privilege or immunity claimed by any party under such constitution, treaty, statute, commission or authority.—Sec. 709, Revised Statutes, page 132.

In the case of H Miller vs. M. Joseph, &c., 17 Wallace, 655, this court decided that it had no jurisdiction. That was a case involving the validity of a contract for substitution in the Confederate army, and although the court sustained the view taken by the Appellee, that the Court of Appeals of Virginia did right in refusing an appeal for want of jurisdiction (the amount involved being less than $500), yet it was strongly intimated that this court had no jurisdiction of the questions involved. The act of the Confederate Congress sequestrating the property of alien enemies of that Government, and the act of the same body authorizing substitutes to be employed in the army, were both acts of the same *de facto* government legislating with reference to subject matters under its supreme control and in the exercise of her belligerent rights—rights which were at the same time exercised by the government of the United States as belligerent rights—incident to a state of war. These acts involve questions wholly outside of the matters embraced in the judiciary act, and which were never contemplated by its framers. The case of Texas vs. White, 7 Wallace, referred to in the Petition for a writ of error in this cause, is not authority on the question of jurisdiction. That case was between a State and citizens of another State, and involved the validity of a State statute, and also the question whether Texas was one of the United States, at the time of filing the bill. It was a question of original and not of appellate jurisdiction.

It cannot be claimed that the Confederacy was a State or States within the meaning of the 25th section of the judiciary act, and the words "any State" can hardly be held sufficiently comprehensive to embrace that government, which is now no longer in existence, and which was formed outside of and against the will of the Federal Government.

The term "State" obviously refers to States as recognized by the Constitution of the United States, or as members of the Union, and not to political organizations formed outside the Constitution. See opinion of Chief Justice Marshall in Hepburn and Dundass vs. Ellzey, 2d Cranch 452.

The counsel for the plaintiffs are unfortunate in their reference to the pleadings. The presentation to the court on the agreed facts was enough for the judgment of the court. It appears that several pleas were filed, *non assumpsit* and *plene administravit* among the number. Now a verdict in general terms without specifying upon what issue or issues it is found responds to all the issues, and the judgment in this as rendered represents all the pleas, the judgment being for the defendant. 2 Tuck. Com., page 306. 3 Call, 19. 7 Leigh 68. 1 Hen. & Mun. 374. 4 Munf. 145. If the verdict responded to only one issue, then the view might be different, but responding to both or all the pleas the effect is that all the pleas are to be considered as sustained, and *non assumpsit* and *plene admin-*

istravit being so sustained, if there was error in reference to a decision on the special pleas, then the judgment would still be good, and on questions not within the appellate jurisdiction of this court. This court therefore would refuse to consider the petition of appeal on the ground that the cause was determined against the plaintiffs upon the issue of *non assumpsit*, and it is only for the appellate court of Virginia to correct any error made in regard thereto. The agreement referred to in the record would cure any defect in pleading, but the laws of Virginia do not allow any advantage to be taken, after verdict, of such informality in pleading, as failure to join issue. V. Code 1873, ch. 167, § 28. 20 Gratt. 344. But even if there were no such provision made by the laws of Virginia the plaintiffs would fail on this proposition, for the Record shows conclusively that issue was joined upon the plea of *non assumpsit* (see Record, page 9), and this being the only plea upon which issue was joined and the court having given judgment for the defendant, it is to be presumed that it was given upon this issue. It is for the plaintiffs to have a Record showing that this judgment was made on the special pleas they fail so to do, and thus failing the court should refuse to consider the appeal.

J. A. Liggett
Wm B. Compton

Supreme Court of the U. S.

OCTOBER TERM, 1877

CHARLES B. WILLIAMS, et al.,
Plaintiffs in Error,
vs.
JASON N. BRUFFY,
Administrator, &c.

No. 96.

Brief of WM. A. MAURY, *as amicus curiæ, on the Jurisdictional Question.*

STATEMENT.

This is assumpsit to recover a sum due the plaintiffs-in-error for goods and merchandise furnished by them to the defendant's intestate.

The action was brought in the Circuit Court of the county of Rockingham, Virginia, on the 29th of August, 1866.

The defendant pleaded non assumpsit, and two special pleas, substantially the same, in one of which he averred that during the late civil war the plaintiffs were citizens of the United States, that Virginia was one of the States that seceded and formed the federation known as the Confederate States of America; that on the 30th of August, 1861, the government of the said Confederate States enacted a law sequestrating the lands, tenements, goods, chattels, rights and credits within the Confederate States and every interest therein, held by or for any alien enemy since the 21st of May, 1861, excepting such debts

as may have been paid into the Treasury of any one of the said Confederate States before the passage of the law, and making it the duty of every attorney, agent, firm, partner, trustee or other person holding, or controlling any such lands, &c., speedily to inform the receiver of the said Confederate States, and render an account thereof, and, "as far as practicable, place the same in the hands of such receiver," whereupon such person would be acquitted of all responsibility for property so turned over, and that "any person wilfully failing to give such information was made guilty of high misdemeanor;" that on the first of January, 1862, George Bruffy, the defendant's intestate, being then a citizen of Virginia and subject to all the laws of the Confederate States, paid the debt claimed by the plaintiffs, to one John Kenney, a receiver of the said Confederate States, by virtue of which payment he, the defendant, is fully acquitted and discharged in the premises.

The other special plea, after setting up substantially the same matter, avers that the said John Kenney, a receiver of the said Confederate States, filed a petition in a certain Confederate District Court under the said sequestration act setting forth the indebtedness of George Bruffy, deceased, to the plaintiffs, and that the latter were citizens of the State of Pennsylvania, and that *a decree was entered in said Court sequestrating said debt due plaintiffs, under which the said receiver, John Kenney, collected the amount thereof with interest from said George Bruffy, in* his lifetime, and gave him a receipt accordingly, and that by means of such "payment and collection" the defendant is fully acquitted and discharged of the said debt.

The record recites (p. 14), that a plea of *plene administravit* was filed, but it nowhere appears.

The plaintiffs demurred to the said special pleas, but the demurrers were overruled (p. 17), and the case was then

submitted to the Court, "neither party requiring a jury" (p. 17), upon certain depositions and an agreed statement of facts (pp. 11, 15). The depositions are merely to prove the sale and delivery of the merchandise named in the declaration. The case agreed is to the effect that during the war the plaintiffs resided in Pennsylvania and the defendant's intestate, in Virginia, one of the States adhering to the Confederate States Government; that the defendant's intestate died during the war; that during his lifetime under an act of the Confederate States Government, George Bruffy, the said intestate, "paid to John Kenney, sequestrator of the Confederate Government, and after a judgment of the District Court of the Confederate States, the principal debt with interest, claimed by the plaintiffs on this suit" (p. 15); that said George Bruffy from the commencement of the war until his death, resided in Rockingham County, Virginia, and in that part of Virginia which adhered to the Confederate Government, and was represented in the Confederate Congress, and had representatives in the Legislature which sat in Richmond; that during the war all commercial intercourse between the United States and the Confederate States, including the domicile of the said intestate, was prohibited, and that the defendant administered on the said intestate's estate, and from the time his administration began until this time, has resided in Rockingham County, Virginia.

Upon this evidence the Court rendered judgment for the defendant. (p. 17.)

Afterwards the plaintiffs applied to the Court of Appeals of Virginia for a supersedeas to the said judgment, but that Court, being of opinion that the judgment was plainly right, denied the application.

Jurisdiction.

It is respectfully maintained that this case does not

come within the guarded and narrow jurisdiction of this Court to review the judgments and decrees of the State tribunals. In the exercise of this delicate jurisdiction the application of the maxim, *boni judicis ampliare jurisdictionem* might lead to dangerous usurpation.

Since a reargument was ordered in this case the learned counsel for the plaintiffs-in-error seems to have exercised his ingenuity to find a basis for jurisdiction in this Court.

It is clear that no right, title, privilege or immunity under the Constitution of the United States, or any treaty, statute, commission or authority in virtue thereof, is "specially set up or claimed" in the record, nor is it certified by the Court below that any pretension coming within any of the above predicaments was urged. It is, therefore, clear that the only ground on which this Court can be asked to assume jurisdiction is that it appears by "*clear and necessary intendment*" that one of the above-named categories of federal right was involved in the judgment.

The first ground upon which jurisdiction is urged is, that the pretension of acquittance and discharge from the plaintiffs' debt, set up by the defendant under the Confederate act of sequestration, drew into question the validity of a statute of, or an authority exercised under, a State, namely, Virginia, and that the decision was in favor of its validity. But here the learned counsel assumes what has been settled contrariwise by this Court with great deliberation, that is to say, he assumes that the Confederate act was a statute of, or an authority exercised under, a State, whereas this Court has decided that notwithstanding the Union and its integral parts, the States, are indestructible, the acts of the persons wielding the power and resources of the States or parts of States at war with the United States were in no proper sense the acts of States. (7 Wallace, *Texas* v. *White*.) It is unnecessary to inquire how far the acts of the Confederate States were the acts of Virginia, since, according to the view the Court has taken, it was impos-

sible for the State of Virginia to have been compromitted in any such way. All the while there was a loyal adhering Government of Virginia, under whose authority and consent a partition of the State was made, and a new State created. Upon what ground, then, can it be maintained that a statute of, or authority exercised under, the hostile *de facto* Government of Virginia was the statute or authority of a State, in the sense of the law which is this Court's commission to take cognizance of appeals from the State tribunals? (5 How., *Scott* vs. *Jones*.)

The second ground on which jurisdiction is claimed is that the judgment involves a decision against a right, title, privilege, and immunity, claimed by the plaintiffs in error under the Constitution, that is to say, that the judgment denies to the plaintiffs a "privilege and immunity" secured to them by the 2 Section, of the 4th Article, of the Constitution, and by the 14th Amendment of the Constitution, which prohibits any State to "make or enforce any law, which shall abridge the privileges and immunities of citizens of the United States." In support of this contention it is maintained that the act of sequestration was leveled at the citizens of States who adhered to the Union, and whom the act designated alien enemies, and involved an injurious discrimination against the citizens of the loyal States, in that it rendered their property and effects confiscable, while the property and effects of citizens of Virginia were not affected by the act.

As this Court exercises a statutory jurisdiction, it can only take jurisdiction in the way prescribed by the statute. Now the statute (R. S., §709), lays down, that "when any right, title, privilege, or immunity, is claimed under the Constitution, or any treaty, or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity, SPECIALLY SET UP OR CLAIMED by either party &c., &c.," the final judgment of the State Court may be re-examined and

reversed or affirmed by this Court. Now, we maintain that it is only in cases where a right, title, privilege, or immunity, asserted under the Constitution is "*specially set up or claimed*" in the State tribunal, that this Court can exercise jurisdiction, and that it cannot review the judgment or decree of a State Court on the ground that by necessary intendment, one of the parties must have claimed some right, title, privilege or immunity, under the Constitution. The words by which this delicate and transcendent power to review, and, if need be annul, the judgments and decrees of Sovereign States has been guarded and limited by Congress must be treated as mandatory and essential in the highest degree. (18 How., 511, *Maxwell* vs. *Newbold*; 1 Black, 460, *Farney* vs. *Towle*; 10 Wall., 507, *Messenger* vs. *Mason*; Phillips' Practice, pp. 136–138.)

Nor does it bestead the plaintiffs-in-error that a general claim, by way of assignment of error, it is set up in their behalf, "under the Constitution and laws of the United States," in the petition for a *supersedeas* to the Court of Appeals of Virginia (p. 6). Seeing that it was impossible to introduce error into the record in that way, as this Court decided in *Fisher* vs. *Cockerell*, 5 Peters, 252.

The fact that the statute (R. S., § 709) does not require that where the validity of a statute of, or an authority exercised under, any State is brought into question by reason of their repugnancy to the Constitution the contention in that regard should be specially set up or claimed is, pregnant with meaning, occurring, as it does, in a statute drawn with the greatest care and by the ablest hands, and which is regarded with a respect akin to that with which the Constitution itself is viewed.

But, supposing this not to be so, we respectfully maintain that the judgment of the State Court, although this Court may be of opinion that it proceeded on the ground of the validity of the sequestration law and the proceedings under it, as set out in the pleadings and evidence, is

not an invasion of the constitutional guaranty to the citizens of each State of the privileges and immunities of citizens in the several States. It is by the action of a State only, and not by the decisions of the State Courts, that this guaranty can be violated. This Court has, time and again, held that the authority exercised under a State whose validity is examinable here, under Setion 709, R. S., must be derived from a statute of the State, and that the judgments and decrees of State Courts are not comprehended by the word "authority" in said Section. In like manner, there must be some law of a State which infringes the equality of the privileges and immunities secured to the citizens of each State, to bring into activity in that class of constitutional rights, the appellate jurisdiction of this Court, under Section 709, R. S.

The contention that the judgment of the State Court involves a violation of the 14th Amendment and that it enforces a "law" abridging the privileges and immunities of a citizen of the United States is not tenable, because, as we have already shown, the Confederate sequestration act was not a law of a State.

If, however, we concede that it can be gathered from the record, by intendment, that federal question was set up, jurisdiction will not vest in this Court unless it can see that *the judgment necessarily turned on the federal question.* But, how can this be predicated of the judgment, seeing that the State Court may have based it on a general principle of jurisprudence, that money paid by a debtor in the circumstances set out in the record, was not demandable by the creditor, as in *Rockhold* vs.———, in 92, U. S.

It is, therefore, submitted that the appeal must be dismissed for want of jurisdiction.

WM. A. MAURY,
as Amicus Curiæ.

18 Hun 571

2 Otto 286

22 Gratton 632

16 Fed 43